

PROPOSED ORDINANCE

Proposed by: Town Attorney

A proposed ordinance to amend Chapter 10 – Offenses, Miscellaneous, Article 3, Offenses Against Property, Section 10-20.1 Same-Noise, and Article 5 – Offenses Against the Peace, Section 10-44, Creation or Continued Excessive Noise, of the Code of the Town of Vienna.

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF VIENNA, VIRGINIA THAT:

Section 1: The Town Code, Chapter 10 - 9, Offenses, Miscellaneous, Article 3, Offenses Against Property, Section 10-20.1 Same-Noise, is amended to read as follows:

Sec. 10-20.1. Same—Noise.

- (a) *Purpose and Intent* - It is declared as a matter of legislative determination and public policy that the making, creation or maintenance of excessive, unnecessary or unusual loud noises, unusual and unnatural in their time and place and which disturb the usual peace, quietude, tranquility and normal enjoyable use of any residential area are detrimental to the public health, safety, convenience, welfare and prosperity of the residents of the Town of Vienna and constitute a public nuisance.
- (b) Any person, firm or corporation which permits, allows or suffers any such excessive, unnecessary, loud or unusual noise or noises as referred to in *this Section subsection 10-20.1(a) above*, to emanate from his property or place of business so as to disturb the usual peace, quietude, tranquility and normal enjoyable use of any residence or residences in the Town shall be guilty of a civil offense with a penalty of \$250.00 for the first offense and \$500.00 for each subsequent offense. This section shall not apply to noise generated in connection with a business conducted on property zoned CM or CMP *except where prohibited under this Section or in provisions related to specific commercial activity.*
- (c) ~~In addition to any other excessive, unnecessary or unusually loud noises as referred to in subsection 10-20.1(a) above, and not to the exclusion of such, the following acts are specifically declared to be excessive, unnecessary and unusually loud noises, unusual and unnatural in their time and place and disturbing to the usual peace, quietude, tranquility and normal enjoyable use of residential area; are detrimental to public health, safety, and welfare of the residents of the Town of Vienna, and constitute a public nuisance:~~
- ~~(1) The loading or unloading of commercial vehicles within 300 feet of any residence between the hours of 11:00 p.m. and 6:00 a.m. Monday through Saturday, or between 11:00 p.m. and 8:00 a.m. on Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day;~~
 - ~~(2) The repair, collection from, or servicing of any trash or garbage compaction, processing, or disposal equipment located on the exterior of any building between the hours of 11:00 p.m. and 7:00 a.m. within 300 feet of any residence, or between 11:00~~

Commented [BS1]: P&Z new zone names

p.m. and 8:00 a.m. on Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day;

- (3) ~~The erection (including excavation), demolition, alteration, or repair, and any and all activity necessary or incidental thereto, of any building between 8:00 p.m. and 7:00 a.m., Monday through Friday or between 8:00 p.m. and 9:00 a.m. on Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day; and except during any emergency caused necessity to protect the public health and safety as determined by the director of public works, chief of police, Town Manager or his/her designee, Fairfax County Building Inspector, or Fairfax County Fire Marshal or his/her designee. Notwithstanding the foregoing, no contractor or person performing the activities listed above for remuneration shall be permitted to engage in such activity on Sunday;~~
- (4) ~~The operation between the hours of 8:00 p.m. and 7:00 a.m., or between 8:00 p.m. and 9:00 a.m. on Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day of any pile driver, hammer, chain saw, steam, diesel, or gasoline powered shovel, derrick or hoist, lawnmowers, lawn maintenance equipment, or other equipment, the use of which is attended by loud and unusual noise, except during any emergency caused necessity to protect the public health and safety as determined by the director of public works, chief of police, Town Manager or his/her designee, Fairfax County Building Inspector, or Fairfax County Fire Marshal or his/her designee. The time limitations for Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day shall not apply to usual and customary maintenance activities associated with recreational uses as defined in Town Code section 18-4. Notwithstanding the foregoing, no contractor or person performing the activities listed above for remuneration, except when it relates to a recreational use, shall be permitted to engage in such activity on Sunday;~~
- (5) ~~The operation of any propulsion engine of a commercial motor vehicle for more than three minutes when the vehicle is parked, left unattended, or is stopped for other than traffic or maintenance reasons;~~
- (6) ~~The operation of internal combustion powered refrigeration equipment on trucks, trailers or other vehicles between the hours of 11:00 p.m. and 7:00 a.m. when the same are parked for more than ten minutes.~~

(c) Delineated Activity and Prohibited Times:

<u>Type of Activity/Noise</u>	<u>Time of Day Prohibited</u>
(1) <i>The loading or unloading of commercial vehicles within 300 feet of any residence</i>	Monday - Saturday: 11:00pm – 6:00am Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day: 11:00pm and 8:00am

Commented [BS2]: CM Patel suggested 6:30am – 10:30pm

(2) The repair, collection from, or servicing of any trash or garbage compaction, processing, or disposal equipment located on the exterior of any building within 300 feet of any residence	<p>Monday - Saturday: 11:00pm – 7:00am</p> <p>Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day: 11:00pm – 8:00am</p>
(3) The erection (including excavation), demolition, alteration, or repair, and any and all activity necessary or incidental thereto, of any building	<p>Monday - Friday: 8:00pm - 7:00am</p> <p>Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day: 8:00pm and 9:00am</p> <p>Note: (1) This shall be true except during any emergency where it is deemed necessary to protect the public health and safety as determined by the director of public works, chief of police, Town Manager or his/her designee, Fairfax County Building Inspector, or Fairfax County Fire Marshal or his/her designee. Notwithstanding the foregoing, no contractor or person performing the activities listed above for remuneration shall be permitted to engage in such activity on Sunday (2) Notwithstanding the foregoing, no contractor or person performing the activities listed above for remuneration or profit shall be permitted to engage in such activity on Sunday;</p>
(4) The operation of any pile driver, hammer, chain saw, steam, diesel, or gasoline powered shovel, derrick or hoist, lawnmowers, lawn and landscaping maintenance equipment, or other equipment, the use of which is attended by loud and unusual noise	<p>Monday - Friday: 8:00pm – 7:00am</p> <p>Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day: 8:00pm - 9:00am</p> <p>Exceptions: (1) These activities shall not be prohibited during any emergency caused necessity to protect the public health and safety as determined by the Director of Public Works, Chief of Police, Town Manager or his/her designee, Fairfax County Building Inspector, or Fairfax County Fire Marshal or his/her designee; (2) the time limitations for Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day shall not apply to usual and customary maintenance activities associated with recreational uses as defined in Town Code section 18-4 (3). Notwithstanding the foregoing, no contractor or person performing the activities listed above for remuneration or profit, except when it relates to a recreational use, shall be permitted to engage in such activity on Sunday.</p>

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(5) The operation of any propulsion engine of a commercial motor vehicle for more than three minutes when the vehicle is parked, left unattended, or is stopped for other than traffic or maintenance reasons. Public vehicles are excluded from this provision when engaged in required maintenance.	Prohibited on all days and times Monday—Sunday
(6) The operation of internal combustion powered refrigeration equipment on trucks, trailers, auxiliary powered equipment , or other vehicles when the same are parked for more than ten minutes	Monday - Sunday: 11:00pm – 7:00am
(7) Operating, playing or permitting the operation or playing of any radio, amplifier, television, record, tape or compact disc player, drum, musical instrument or similar device in such manner as to permit sound to be heard across a residential real property boundary or when the sound source is located within or on the grounds of a dwelling complex in such manner as to permit sound to be heard within any dwelling unit of the dwelling complex other than a dwelling unit from which such sound emanates [Previously Sec. 10-44]	Sunday - Thursday: 10:00pm-8:00am Friday, Saturday or the day preceding a federal holiday: 11:00pm and 8:00am
(8) When the sound source is located within or upon a motor vehicle on or upon public right-of-way or public property or on the grounds of a dwelling complex and the sound can be heard more than 50 feet from its source [Previously Sec10-44]	Prohibited on all days and times

Commented [BS3]: CM Patel suggested 11:30pm

- (d) Any person, firm or corporation which permits, allows or suffers any such acts set forth in subsection 10-20.1(c) *may also be found* ~~shall be~~ guilty of maintaining a public nuisance and, upon conviction thereof, shall be punished as provided in section 10-20 of this Code.

(Code 1969, § 10-20.1; Ord. of 12-5-1977; Ord. of 2-25-1991; Ord. of 3-2008; Ord. of 6-6-2011(2), § 1)

Commented [BS4]: Do we want to consider adding a provision for loud motor vehicle mufflers?

Section 2: The Town Code, Chapter 10 - 9, Offenses, Miscellaneous, Article 5 – Offenses Against the Peace, Section 10-44, Creation or Continued Excessive Noise, is repealed and readopted as amended Section 10-20.1:

~~Sec. 10-44. Creation or continued excessive noise.~~

- ~~(1) The creation and continuation of any excessively loud, disturbing noise is a serious hazard to the public health, safety and welfare in the Town and the following are hereby prohibited:~~

~~(a) Operating, playing or permitting the operation or playing of any radio, amplifier, television, record, tape or compact disc player, drum, musical instrument or similar device between the hours of 11:00 p.m. and 8:00 a.m. Friday, Saturday or the day preceeding a federal holiday, and between the hours of 10:00 p.m. and 8:00 a.m. Sunday through Thursday in such manner as to permit sound to be heard across a residential real property boundary or when the sound source is located within or on the grounds of a dwelling complex in such manner as to permit sound to be heard within any dwelling unit of the dwelling complex other than a dwelling unit from which such sound emanates; or~~

~~(b) When the sound source is located within or upon a motor vehicle on or upon public right of way or public property or on the grounds of a dwelling complex and the sound can be heard more than 50 feet from its source.~~

~~(2) Nothing contained herein is intended to prevent usual and customary noise incident to regularly scheduled school activities, parades and the like which may be authorized under this Code.~~

~~(Code 1962, § 5-21; Code 1969, § 10-44; Ord. of 3-1966; Ord. of 12-20-2010, § 1)~~

Section 3: This Ordinance shall become effective ten (10) days following notice of adoption by the Town Council.

Passed and approved this _____ day of _____, 2023.

Linda J. Colbert, Mayor

ATTEST:

Town Clerk

c:SDB\Ordinances\AmendmentsNoiseOrdinances 10-20.1 and 10-44