

Memorandum

Date: 25 April 2018

To: Police and Security Committee

From: Keith R. Dalton, Town Manager 

Cc: Department Heads
Mia Jackson, Town Clerk

Subject: Packet for tomorrow's meeting

Berryville Code Chapter 11 – Noise

Staff has provided a document produced by Arlington County, Virginia. Chief White wants to walk you through the first part of the document in furtherance of the Committee's examination of noise regulation.

Berryville Code Chapter 20 - Demonstrations and Parades

Staff would like to discuss the Charlottesville, Virginia ordinance that was distributed at the last meeting.

Berryville Code Chapter 8 – Garbage and Refuse

Please find attached:

- Chapter 8 draft version 1.2 (March 2, 2018)
- Chapter 8 draft version 2.0 (April 26, 2018)
- Rough draft of Collection Policy
- Rough draft of Appendix 1 (of Collection Policy)

The base for version 2.0 is a clean or unmarked version 1.2. Version 2.0 was developed with the goal of keeping the Berryville Code brief. The Collection Policy and associated appendices would address the matter in more detail.

Staff would like to review the attachments and the next steps in this process with the Committee.

**BERRYVILLE TOWN COUNCIL POLICE AND SECURITY COMMITTEE
MEETING AGENDA
Berryville-Clarke County Government Center
101 Chalmers Court, Second Floor
Meeting Room A/B
Regular Meeting
April 26, 2018
9:00 am**

<u>Item</u>		<u>Attachment</u>
1. Call To Order	Dave Tollett, Chair	
2. Approval of Agenda		
3. Department Update	Neal White, Chief	
4. Discussion	Berryville Code Review - Chapter 11 - Noise	1
5. Discussion	Berryville Code Review – Chapter 20 – Demonstrations and Parades	
6. Discussion	Berryville Code Review – Chapter 8 - Garbage and Refuse	2
7. Closed Session	No Closed Session Scheduled	
8. Other		
9. Adjourn		

↑ Denotes an item on where a motion for action is included in the packet

Attachment 1



Berryville Police Department

101 Chalmers Ct., Suite A, Berryville, Virginia 22611

policeadmin@berryvilleva.gov

(540) 955-3863 (540) 955-0207 (Fax)

W. Neal White – Chief of Police

Police & Security Committee

Discussion Points – Chapter 11 Revisions

April 26, 2018

Continuing to review Chapter 11 (Noise), I requested information from police departments across the Commonwealth through the Virginia Association of Chiefs of Police. I received several responses from a variety of agencies as well as information about the specific challenges they faced when revising their ordinances. One particular document that I feel best summarizes some of the complex issues with the enforcement of noise standards was produced by Arlington County in 2014. I have attached that document for review, and would draw attention to the summary and background information.

The responses that I have reviewed are mixed in how the jurisdictions approach measurement of sound, some using meters and others using distances from which the sound is heard. Both standards appear to be valid as long as they are well defined as to what level or distance constitutes a violation.

I am also hoping to have more information to share by the meeting date regarding a comprehensive ordinance review conducted by Christiansburg Virginia. I have spoken with the Chief of that department and they have been working in conjunction with resources from Virginia Tech in order to revise their ordinance. The revised ordinance for Christiansburg is set to be reviewed by Council on April 24, 2018.



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of May 10, 2014**

DATE: May 2, 2014

SUBJECT: Ordinance to Amend, Reenact and Recodify Chapter 15 (Noise Control) of the Code of Arlington County, Virginia (Code).

C. M. RECOMMENDATION:

Adopt an Ordinance to Amend, Reenact and Recodify Chapter 15 (Noise Control) of the Code of Arlington County, Virginia (Code) (Attachment C), to be effective upon adoption.

ISSUES: As part of the required process for ordinance amendments, the County Board is being asked to adopt amendments to chapter 15 of the County Code relating to noise control. There are issues concerning the adequacy of the proposed amendments to address some concerns about noise from outdoor cafes in mixed use districts.

SUMMARY: In 2009, the Supreme Court of Virginia struck Virginia Beach's noise control ordinance due to its use of a *reasonable person* standard to determine whether certain noise violated the ordinance. The reasonable person standard is used in part in Arlington County's noise control ordinance, which is codified at Chapter 15 of the County Code. Following the high court's decision, County staff began a detailed examination of the County's ordinance to eliminate subjective standards like the reasonable person and better define enforcement protocols and penalties for violations. There is broad interest in noise control issues and staff's efforts have focused on improving the enforceability of the current ordinance within the framework of existing standards like decibel limits and prohibited acts. Staff has engaged the public in several community meetings and also worked intensively with the Civic Federation and business stakeholders throughout the revision process. Areas of concern in the community include live entertainment venues and outdoor cafes, and the need for additional regulations to address spot noise nuisances. Staff proposes amendments to Chapter 15 in order to eliminate subjective standards and improve enforcement of noise control regulations. The County Board authorized a broad range of options for advertising based on testimony heard at both the March and April meetings. Staff's recommendation is to adopt an ordinance that includes reasonable standards to

County Manager:

BMD/GA

County Attorney:

[Signature]

31.

Staff: Gary Greene, Department of Community Planning, Housing and Development

address the issues that were raised including the following options from the options advertised by the County Board at the April 22 meeting:

“Mixed-Use District” shall mean any area of the County that is developed with a mixture of commercial, retail and residential uses, whether in the same building or not.

- 15-5.F.7. Athletic contests conducted at privately owned swim clubs shall be exempt from the prohibitions set forth in 15-6 if held between 6:00 a.m. and 10:00 p.m.
- 15.6. G. It shall be unlawful for any person in a group of four or more persons to engage during the nighttime in yelling, wailing, shouting or screaming such that the yelling, wailing, shouting or screaming is heard in any “R” or “RA” District including “RA14-26”, “RA8-18”, “RA6-15” and “RA7-16” within any nearby dwelling unit, house or apartment of another person at least 20 feet from the source of the sound, or at least 50 feet from the source of the sound and either across any real property boundary or at the curb of the pavement of any built street.
- 15-6.N It shall be unlawful for any person to engage in yelling, wailing, shouting, or screaming in any *Mixed-Use District* between the hours of Midnight and 9:00 a.m., such that the yelling, wailing, shouting, or screaming can be heard within any dwelling unit, lodging unit, house or apartment of another person at least 100 feet from the source of the sound unless otherwise provided for by the Special Events Policy.
- 15-6.O It shall be unlawful for the owner, manager, assistant manager, and other person in charge of a retail use located within any *Mixed-Use District*, which includes an outdoor café, exterior rooftop seating area, or other use or activity in the exterior of the retail use to permit any person, while in the outdoor café, exterior rooftop seating area, or other exterior location, to engage in yelling, wailing, shouting, or screaming between the hours of Midnight and 9:00 a.m. such that the yelling, wailing, shouting, or screaming can be heard within any nearby dwelling unit, lodging unit, house or apartment of another person at least 100 feet from the source of the sound.
- 15-6. P It shall be unlawful for any person to engage in yelling, wailing, shouting, or screaming in the County between the hours of 2:00 a.m. and 6:00 a.m. such that the yelling, wailing, shouting, or screaming can be heard within any nearby dwelling unit, lodging unit, house or apartment of another person.

Therefore, staff recommends that the County Board adopt the attached ordinance to amend the Noise Control Ordinance.

BACKGROUND: In an April 17, 2009, decision, the Supreme Court of Virginia unanimously ruled that the noise control ordinance of the City of Virginia Beach was unconstitutional due to its vagueness. As detailed in its opinion in *Tanner v. City of Virginia Beach*, the Court ruled that

the Virginia Beach ordinance's use of the reasonable person standard invites arbitrary enforcement and, given the subjective tolerances, perceptions and sensibilities of listeners, fails to give fair notice to citizens, which is a requirement of due process.

The Supreme Court's decision caused Arlington and other jurisdictions to examine their noise control ordinances to determine their validity in light of Tanner. Arlington's noise control ordinance uses the reasonable person standard in a few instances and includes a severability clause that provides for the severance of provisions found to be invalid while allowing the remainder to remain in effect.

Arlington's noise-control effort is an inter-agency collaboration that involves County staff from the Community Planning, Housing and Development Department's Inspection Services Division/ Code Enforcement Section and officers from the Police Department. The Code Enforcement Section administers the ordinance and conducts investigations during regular business hours with some flexibility to investigate recurrent noise sources that occur on a scheduled basis, regardless of the time of day. Outside those hours, officers from the Police Department investigate noise complaints that occur during the nighttime and on weekends or holidays. Police officers may be routed to all noise complaint issues that may potentially lead to violation and that require immediate remedy, regardless of the time of day. The Police Department exclusively investigates all noise produced by motor vehicles. As a local law, the noise control ordinance is preempted from regulating noise sources regulated by state and federal agencies. The ordinance does not address noises sourced from aircraft and railroads, state roads, federally owned parcels, military installations and reservations.

Although the reasonable person's standard is no longer a valid standard, the County's noise control ordinance contains other standards that objectively define a noise disturbance as that which exceeds the respective maximum permissible decibel limits or constitute a prohibited act based upon an objective standard. A noise meter, a special sound measurement tool, is required to determine many noise disturbances. The use of prohibited acts in the ordinance that have objective standards allows for the determination of a violation without a metering device. The proposed ordinance also introduces a "plainly audible" standard to address certain recurring complaints.

Environmental Noise in Arlington: Following the adoption of the Federal Noise Control Act in 1972, Arlington adopted its own noise control ordinance based on state enabling legislation. By regulating noise, our community establishes a definition, a control mechanism, and a common expectation for limiting environmental noise.

Exposure to noise has deleterious effects on humans, animals and property. Humans exposed to long-term increased noise levels exhibit numerous psychological conditions including hypertension, severe or compound headaches, an inability to sleep, poor digestion increased irritability and stress. Through its noise control ordinance, Arlington endeavors to control noise levels to protect public health, safety, and welfare.

Few ordinances are as challenging to enforce as one that regulates noise, because our personal perceptions of noise vary widely, as does our ability to tolerate the noise sources. In Arlington,

most violators positively respond to an initial warning to abate noise sources or noise producing activities.

Civic Engagement and Public Input: Formal presentations were made to the general public and business community to introduce the proposed changes and receive feedback. Staff also reached out to the Clarendon Alliance, Northern Virginia Building Industry Association, National Association of Industrial and Office Parks and met with a collection of contractors and developers that regularly conduct business in the County. Staff also established a web site to keep the broader public informed. Throughout the development process, there were many web and telephone comments forwarded to staff for consideration. Staff also worked intensively with the Civic Federation and much of that effort is documented on its website.

There was a common theme expressed in the community that “we are disturbed by that which we cannot ignore; loud, inconveniently timed annoyances of a short termed nature.” Community discussions surrounding environmental noise eventually led to the issue of community expectations. Sound is all around the community, and what an individual defines as noise is often a matter of personal opinion. How residents and businesses coexist often hinges on “common-sense.” Yet many in community forums agreed that the noise control ordinance and its revisions would serve as the best tool to educate and strongly define the community expectation; it could also serve as a checkpoint before complaints are officially filed.

Noise complaints and the associated investigation requests are less than one percent of the code enforcement workload, and result in less than ten percent of offenses charged by the police department. Most noise offenses end when offenders are made aware through warnings. Although highly annoying to a complainant who tolerated the disturbance before contacting police or code enforcement, with the exception of activities in entertainment districts and at special events, there is not always an effective way for staff to anticipate where and when noise offenses are likely to occur. While there was some interest in a more prescriptive ordinance revision, staff from the police department and code enforcement agencies preferred that the ordinance revisions be more practical than aspirational, particularly given the shared community expectation that staff be able to effectively and efficiently stop the offensive noise.

All enforcement officers have authority to apply the most applicable code references, based on the activity occurring. Although noise from a domestic fight attracts the concern of neighbors, the noise control ordinance would not be an appropriate charging document in most cases, especially if the altercation was physical. Ultimately, it was clarified that police use the noise control ordinance in addition to, not instead of, broader criminal laws.

Noise Complaints, Involved Agencies, and Enforcement: Arlington’s top four noise related complaints, as reported to Code Enforcement and the Police Department, relate to:

- Loud Parties or Gatherings;
- Construction Noise;
- Animal Noises, and
- Live Entertainment Venues.

Loud Parties or Gatherings: The primary noise related complaint reported to Police is loud or raucous parties and gatherings. The noise issues associated with parties and gatherings are typically reported during the night and alcohol is often involved. Heavy alcohol consumption at large gatherings and events can sometimes lower inhibitions and disable behavioral controls and lead to misdemeanor activity such as public swearing, public intoxication, and occasionally assaults. Police typically address these negative behaviors when conducting investigations and the noise that stems from that conduct is readily abated.

Warnings are often issued by the Police to provide violators notice of the general disturbance to others in the community, providing an opportunity for the violator to informally rectify the negative conduct. Ultimately, the issuance of a summons or an arrest is likely if noise disturbances continue unabated. Criminal violations of the ordinance are basic misdemeanors with a low (\$ 25.00) penalty which fails to provide a sufficient deterrent to violators.

The County, through the special events permit process, prescribes limits on noise from certain scheduled public events, where an event's potential noise is evaluated and specific standards are imposed to limit any deleterious effects.

Construction Noise: Construction noise complaints are equally split between residential and commercial sites throughout the County. In commercial zones adjacent to residential districts and mixed-use districts the report is often sourced around heavy vehicles and the assembly of construction equipment at the site. Pre-dawn construction, pile driving and clanging of metal parts in metal dumpsters round out the concerns. To reduce construction related noise complaints, County staff has increased outreach to the development community regarding environmental noise and the County's community expectation about its control. The Inspection Services Division has developed a noise control ordinance brochure for issuance with all new construction permits.

Code Enforcement staff also attend pre-construction meetings to communicate expectations and answer questions regarding construction noise. Developments subject to approved Site Plans may also use the noise control ordinance as a base standard for construction restrictions limiting approved hours of construction to reduce noise impact on the community. Code Enforcement staff investigate construction noise during business hours and the Police investigate it during non-business hours, weekends and holidays. A special Zoning Enforcement unit addresses Site Plan conditions related to construction activity.

Animal Noises: Staff has received an increasing number of barking and dog-related noise complaints over the last decade. The County's effort to embrace its residents' pets is evident by the County's eight community canine areas and other allowances for pets in our community; however, exceptions occur when incessant barking or other noise negatively impacts community members.

To determine a violation, the current ordinance requires the use of sound meters to measure the level of sound produced by the noise. While barking is an innate behavior of dogs, incessant barking or other continuous animal noises may also be symptomatic of a safety or security problem with the animal, its environment or owner.

Staff has identified a new assessment process that uses a plainly audible test, over a specified period of time, to determine whether a violation is occurring. This new standard is expected to more effectively address animal noise complaints and, because it does not require the use of a sound meter, is a more efficient enforcement tool for our community.

Live Entertainment Venues: Sound that originates from live entertainment venues, where music is played or dancing occurs, is regulated by the County's Zoning Ordinance through special exception use permits. Where approved, the noise control ordinance serves as a base standard for live entertainment venues, with a use permit's conditions used as a direct tool to control the volume, type, location and time of the sound and sound-producing activity to regulate expectations for operation.

Through the use permit process, public meetings allow for community input, where residents and County staff concerns may be vetted. Controls and limits are often applied prior to approval of the live entertainment venue, with periodic reviews scheduled to ensure compliance. The County is able to cite violations and revoke the approval of live entertainment establishments that fail to follow the approved guidelines. Community conversations regarding the negative impact of noise have sometimes centered on annoyances sourced at live entertainment venues. Staff has assessed these concerns and determined that the current format of use-permit review, with potential revocation, is the best way to regulate the annoyance. With few exceptions, this mechanism has proven to be an effective tool for addressing issues.

The Zoning Enforcement unit receives complaints, conducts investigations of live entertainment venues and is responsible for ensuring compliance with use permit conditions. Zoning inspectors can coordinate the scheduling of late night inspections with code enforcement inspectors who will use decibel meters to measure sound emitted from live entertainment venues to ensure compliance with the noise control ordinance. Where code enforcement has conducted decibel readings of sound emitted from live entertainment venues, and the use permit conditions found compliant, the noise readings have rarely exceeded the maximum limits for the zoning designation. The County Board has increasingly considered and approved conditions for live entertainment venues that mitigate the negative sound impact to others. The periodic proactive inspection of use permit conditions by the Zoning Enforcement unit would increase the likelihood for continued compliance and foster acceptance by the community.

Noise from Outdoor Cafes and Rooftop Restaurants: During the last several months there has been much concern raised about the noise being generated from outdoor cafes in the County's mixed-use districts. This was the subject of much conversation at the two request to advertise public hearings. Outdoor cafes on private property and rooftop restaurants are by-right uses. Some are operating more like outdoor bars and are quite successful, thus creating crowd noise that is an annoyance to nearby residents. The County Board advertised a broad range of options for final consideration. These options and staff's recommendation are addressed in detail in the discussion section.

Noise Enforcement in Other Jurisdictions: As part of the process of reviewing the noise control ordinance, County staff reviewed the ordinances of ten communities across the country and

dozens of Virginia localities regarding noise limitations and enforcement protocols. Twenty-one elements common to noise control ordinances were identified for comparison. Staff examined measures such as maximum decibel limits standards, animal noise complaints, agencies used for enforcement and the types of enforcement utilized, which included maximum fines and penalties. Best practices were identified, and where legally and practically appropriate, incorporated to ensure our community expectations regarding environmental noise were comprehensively addressed. The review included large urban centers and other comparable jurisdictions in the Commonwealth of Virginia (See Appendix A).

The following principal comparators were identified:

Alexandria, Virginia	New York, New York
Baltimore, Maryland	Philadelphia, Pennsylvania
Fairfax (County), Virginia	Richmond, Virginia
Los Angeles, California	Virginia Beach, Virginia
Montgomery (County), Maryland	Washington, District of Columbia

DISCUSSION: The noise control ordinance was adopted effective January 1, 1975, to address environmental noise in Arlington County. When the ordinance was first adopted, Arlington had approximately 163,441 residents. Arlington's population has increased 21 percent since the adoption of the noise control ordinance. In light of Arlington's greatly increased population and changed physical environment, especially in the Metro corridors, strengthened and definitive noise control ordinance language, coupled with clarified enforcement protocols, will allow for more effective enforcement of the ordinance. There has not been a comprehensive review of the ordinance since the mid-1970s. Minor amendments were made to the ordinance in 2006 to address noise sources created by County-facilitated activities (i.e., trash and recycling contractors) and County-owned or -managed properties (e.g., the Trades Center).

Why Amend the Noise Control Ordinance: Elimination of the reasonable person standard removes a vague, subjective standard from the ordinance. The Supreme Court struck Virginia Beach's noise ordinance because it relied on a subjective standard to determine whether or not a noise violation occurred. Arlington's ordinance used three standards: a measured standard of that which is injurious to humans or animals, a reasonable person standard, and a measured standard based on the maximum permissible decibel limits in particular zoning districts.

Despite the language of the current ordinance, Code Enforcement staff in Arlington had not used the reasonable person standard for ten years preceding the Supreme Court's decision, electing to measure violations through designated decibel limitations or through the defined set of prohibited acts.

Although Arlington's ordinance contained a reasonable person standard, the ordinance has remained in effect during the period while County staff developed the revisions which are now proposed to be advertised for public hearing. Amending the ordinance now provides an updated law for more effective and equitable enforcement of the ordinance.

Community Concerns: Many meetings were held with Civic Federation representatives, and although consensus was achieved on many issues, two areas remain where staff disagrees with recommendations proposed by the Civic Federation. In initial conversations with the Civic Federation, concerns were raised about the impact of loud backyard activities, like beer pong parties, affecting the quality of life in single-family residential areas during the evening, and the challenges police officers face in addressing noise if they are not equipped and trained to use noise meters. In response, staff drafted language to address screaming and similarly defined vocal activity heard above the level of conversation, during the Nighttime in type “R” residential districts using a plainly audible standard. As a secondary benefit, the new language could allow police officers to address the similarly defined vocal disturbances created by raucous persons leaving entertainment areas and negatively impacting residential areas at public streets and sidewalks, a common concern in the Rosslyn-Ballston corridor. The Civic Federation proposed to expand the language to include residential uses in commercial/mixed-use districts, citing the increased benefit to the overall residential community and perceived simplicity given the challenges presented for police to know the affected zoning designation when servicing a call. Importantly, noise disturbances and most prohibited acts may already be addressed in commercial/mixed-use districts, especially since most issues are driven by amplified music allowed by use permit. To resolve concerns, the draft adds new language to address instruments and other amplified sounds, the primary source of noise complaints at commercial structures, without noise meters, using a plainly audible standard. The draft also adds new specific measurement standards to effectively address noise sources affecting others within the multi-unit structure or upon its common campus. At the recessed meeting on April 22, the County Board added language to expand the advertisement expanding this provision to all “RA” Districts.

In addition, at the March and April County Board meetings to authorize advertising a few outstanding issues were raised, which are discussed below.

Outdoor Cafes: While the issue of noise associated with uses such as live entertainment and outdoor cafes in the County’s mixed use corridors had been raised throughout the process, additional concerns were raised about the noise associated within outdoor cafes. While staff had not recommended advertising changes to address this concern, the County Board listened to groups representing condominium owners in Ballston regarding their concerns and directed staff to develop language to be advertised to address their concerns. Staff met with representatives of the group and proposed language which was further expanded by the County Board at the time of authorizing advertising. The options included a prohibition on plainly audible yelling, wailing, shouting or screaming for a variety of times ranging on Friday and Saturday from 11:00 p.m. and 12:00 a.m. Midnight until 7:00 a.m. of the next day; and from 10:00 p.m. until 9:00 a.m. on the remaining weekdays and Sundays. In conjunction with the time range options, the County Board also advertised a range of distances from the noise to be used as a plainly audible measure to determine if the noise could be heard and a violation determined. Other considerations included an option to prohibit plainly audible yelling, wailing, shouting or screaming all day on Sundays, and a request for significantly higher fines; however, the County Board did not advertise these options. The specific language options advertised is contained in the table below.

While staff understands that these activities can be an annoyance to some who live near these activities, the proposed Noise Control Ordinance strives to strike a balance between legislating

against community annoyances and recognizing the County's long term plans for creating lively, high-density, mixed use urban villages. It also strives to strike a balance between long term homeowners in these corridors with the newer arrivals living and working in the corridors. Staff continues to believe that the issues associated with live entertainment and outdoor cafes are limited to a few places and in our experience do not violate the maximum decibel levels. Nonetheless, some of these issues are clearly an annoyance to those living close by. Staff continues to strive to find ways to deal with the specific facilities rather than legislating broadly against all of them.

Among the range of options advertised were those put forward by the Altavista/Berkeley Ad Hoc Committee of Concerned Homeowners. These proposals seek to establish a plainly audible standard for residences within 50 feet of a sound source and to establish more restrictive hours, including a daytime standard for Sundays. Staff does not recommend that these be adopted. Staff does support a distance of 100 feet and a single set of hours from 12:00 am to 9:00 am. While these are different hours and distances than staff recommends for single family districts, staff believes that there must be different standards for these districts. By their very nature these districts are different and if the goal is to have successful retail then more flexibility is needed. The proposed hours strive to establish a reasonable time after which the types of activities that typically generate noise must cease. It does not mean that businesses must close but the noise associated with some outdoor cafes and rooftop bars would have to lessen. The group also proposed language that would allow staff to cite the managers of such establishments if they fail to control the noise associated with these uses. Staff supports this addition but similar to the language above recommend the same hours and distance option be adopted. Staff recommends that the following language be approved:

- 15-6.N It shall be unlawful for any person to engage in yelling, wailing, shouting, or screaming in any Mixed-Use District between the hours of Midnight and 9:00 a.m., such that the yelling, wailing, shouting, or screaming can be heard within any dwelling unit, lodging unit, house or apartment of another person at least 100 feet from the source of the sound unless otherwise provided for by the Special Events Policy.
- 15-6.O It shall be unlawful for the owner, manager, assistant manager, and other person in charge of a retail use located within any Mixed-Use District, which includes an outdoor café, exterior rooftop seating area, or other use or activity in the exterior of the retail use to permit any person, while in the outdoor café, exterior rooftop seating area, or other exterior location, to engage in yelling, wailing, shouting, or screaming between the hours of Midnight and 9:00 a.m. such that the yelling, wailing, shouting, or screaming can be heard within any nearby dwelling unit, lodging unit, house or apartment of another person at least 100 feet from the source of the sound.

Staff also recommends that a definition of Mixed-Use District be adopted as follows:

“Mixed-Use District” shall mean any area of the County that is developed with a mixture of commercial, retail and residential uses, whether in the same building or not.

Staff believes that there are a few establishments that generate these complaints and most are addressed successfully through the special exception process where the County Board can introduce additional limitations and conditions to address noise. In addition, staff has begun to have informal discussions about addressing the issue of these types of activities within mixed use districts and is exploring solutions that might include applying further restrictions on outdoor cafes.

Swimming Pools: Several representatives of Swimming Pool in Arlington also raised issues regarding the proposed Noise Control Ordinance. Their concerns focused on the new prohibition against yelling, screaming and wailing in the nighttime since they all held swim meets that started at 7:00 am in the morning. Their primary concern was that they had been doing this for years and did not want to be penalized and limited by the new provision. The County Board also advertised options to exempt them from the prohibition. Staff recommends the option that exempts them from the provision of the new 15.6.N. as set forth below:

15-5.F.7. Athletic contests conducted at privately owned swim clubs shall be exempt from the prohibitions set forth in 15-6 if held between 6:00 a.m. and 10:00 p.m.

Advertised Options: To address the issues raised, the County Board authorized for advertisement purposes the following optional language:

SECTION	OPTION	OPTIONAL DRAFT LANGUAGE
15-3. (Mixed-Use District)	A	"Mixed-Use District" shall mean any zoning district that includes a combination of office, retail, or similar commercial related use and a residential use, as approved by the County Board, whether public, private or a combination thereof and where the maximum permissible noise level, as set forth in Table I of Section 15-5 of this chapter, is 65 decibels or greater.
15-3. (Mixed-Use District)	B	"Mixed-Use District" shall mean any area of the County that is developed with a mixture of commercial, retail and residential uses, whether in the same building or not and where the maximum possible noise level, as set forth in Table I of Section 15-5 of this chapter, is 65 decibels or greater.
15-3. (Mixed-Use District)	C	"Mixed-Use District" shall mean any area of the County that is developed with a mixture of commercial, retail and residential uses, whether in the same building or not, and which is located in established Metro Station areas, Shirlington, East Falls Church and the designated Commercial Nodes of Columbia Pike and where the maximum possible noise level, as set forth in Table I of Section 15-5 of this chapter, is 65 decibels or greater.
15-5.F.7	1	Athletic contests conducted at privately owned swim clubs shall be exempt from the prohibitions set forth in Section 15-6 if held between 6:00 a.m. and 10:00 p.m.
15-5.F.7	2	Athletic contests and other activities conducted at privately owned swim clubs shall be exempt from the prohibitions set forth in Section 15-5, Tables I and II of this section.

15-6.G		It shall be unlawful for any person in a group of four or more persons (alternative option: person) to engage, in any "R" zoning district during the nighttime, in yelling, wailing, shouting, or screaming such that the yelling, wailing, shouting or screaming is heard in any "R" or "RA" District including "RA14-26", "RA8-18", "RA6-15" and "RA7-16" within any nearby dwelling unit, house or apartment of another person at least 20 feet from the source of the sound, or at least 50 feet from the source of the sound and either across any real property boundary or at the curb or on the edge of the pavement of any built street.
15-6.N	A	It shall be unlawful for any person to engage in yelling, wailing, shouting, or screaming in any Mixed Use District before 9:00 a.m. or after 11:00 p.m. on Fridays and Saturdays and before 9:00 a.m. and after 10:00 p.m. on Sundays through Thursdays, and between 12:00 noon and 6:00 p.m. on Sundays, such that the yelling, wailing, shouting, or screaming can be heard within any dwelling unit, lodging unit, house or apartment of another person at least (option 1-50 feet) (option 2-100 feet) (option 3-200 feet) from the source of the sound, unless otherwise provided for by the Special Events Policy.
15-6.N	B	It shall be unlawful for any person to engage in yelling, wailing, shouting, or screaming in any Mixed Use District between the hours of Midnight and 9:00 a.m. such that the yelling, wailing, shouting, or screaming can be heard within any dwelling unit, lodging unit, house or apartment of another person at least (option 1-50 feet) (option 2-100 feet) (option 3-200 feet) from the source of the sound, unless otherwise provided for by the Special Events Policy.
15-6.O	A	It shall be unlawful for the owner, manager, assistant manager, and other person in charge of a retail use located within any Mixed Use District, which includes an outdoor café, exterior rooftop seating area, or other use or activity in the exterior of the retail use to permit any person, while in the outdoor café, exterior rooftop seating area, or other exterior location, to engage in yelling, wailing, shouting, or screaming before 9:00 a.m. or after 11:00 p.m. on Fridays and Saturdays and before 9:00 a.m. and after 10:00 p.m. on Sundays through Thursdays, and between 12:00 noon and 6:00 p.m. on Sundays, such that the yelling, wailing, shouting, or screaming can be heard within any nearby dwelling unit, lodging unit, house or apartment of another person at least (option 1-50 feet) (option 2-100 feet) (option 3-200 feet) from the source of the sound, unless otherwise provided for by the Special Events Policy.
15-6.O	B	It shall be unlawful for the owner, manager, assistant manager, and other person in charge of a retail use located within any Mixed Use District, which includes an outdoor café, exterior rooftop seating area, or other use or activity in the exterior of the retail use to permit any person, while in the outdoor café, exterior rooftop seating area, or other exterior location, to engage in yelling, wailing, shouting, or screaming between the hours of Midnight and 6:00 a.m. such that the yelling, wailing, shouting, or screaming can be heard within any nearby dwelling unit, lodging unit, house

		or apartment of another person at least (option 1-50 feet) (option 2-100 feet) (option 3-200 feet) from the source of the sound, unless otherwise provided for by the Special Events Policy.
15-6.P	A	It shall be unlawful for any person to engage in yelling, wailing, shouting, or screaming in the County between the hours of 11:00 p.m. and 6:00 a.m., such that the yelling, wailing, shouting, or screaming can be heard within any nearby dwelling unit, lodging unit, house or apartment of another person, unless otherwise provided for by the Special Events Policy.
15-6.P	B	It shall be unlawful for any person to engage in yelling, wailing, shouting, or screaming in the County between the hours of 2:00 a.m. and 6:00 a.m., such that the yelling, wailing, shouting, or screaming can be heard within any nearby dwelling unit, lodging unit, house or apartment of another person, unless otherwise provided for by the Special Events Policy.

Staff's Recommendations: After further consideration and for the reasons explained throughout this report, staff recommends that the following options be adopted as a part of the revised Noise Control Ordinance:

- 15-5.F.7. Athletic contests conducted at privately owned swim clubs shall be exempt from the prohibitions set forth in 15-6 if held between 6:00 a.m. and 10:00 p.m.
- 15.6. G. It shall be unlawful for any person in a group of four or more persons to engage during the nighttime in yelling, wailing, shouting or screaming such that the yelling, wailing, shouting or screaming is heard in any "R" or "RA" District including "RA14-26", "RA8-18", "RA6-15" and "RA7-16" within any nearby dwelling unit, house or apartment of another person at least 20 feet from the source of the sound, or at least 50 feet from the source of the sound and either across any real property boundary or at the curb of the pavement of any built street.
- 15-6.N It shall be unlawful for any person to engage in yelling, wailing, shouting, or screaming in any Mixed-Use District between the hours of Midnight and 9:00 a.m., such that the yelling, wailing, shouting, or screaming can be heard within any dwelling unit, lodging unit, house or apartment of another person at least 100 feet from the source of the sound unless otherwise provided for by the Special Events Policy.
- 15-6.O It shall be unlawful for the owner, manager, assistant manager, and other person in charge of a retail use located within any Mixed-Use District, which includes an outdoor café, exterior rooftop seating area, or other use or activity in the exterior of the retail use to permit any person, while in the outdoor café, exterior rooftop seating area, or other exterior location, to engage in yelling, wailing, shouting, or screaming between the hours of Midnight and:9:00 a.m. such that the yelling, wailing, shouting, or screaming can be heard within any nearby dwelling unit,

lodging unit, house or apartment of another person at least 100 feet from the source of the sound.

- 15-6. P It shall be unlawful for any person to engage in yelling, wailing, shouting, or screaming in the County between the hours of 2:00 a.m. and 6:00 a.m. such that the yelling, wailing, shouting, or screaming can be heard within any nearby dwelling unit, lodging unit, house or apartment of another person.

Significant Changes To The Noise Control Ordinance: In addition to the changes discussed above, the primary significant changes to the Noise Control Ordinance include the following:

New Language

- Adds new definitions for
 - Legal Holidays
 - Mixed Use Districts
 - Motor Cycles
 - Motor Vehicles
 - Multi-unit structures

New Measurement Standards

- Noise Disturbances at properties
 - Adds language that clarifies how sound level meters are to be used to determine violations at adjoining properties and for flexibility in addressing noise sources and noise impacted areas that are elevated above grade.
- Noise created by motor vehicles
 - Modifies language to allow measurement in affected areas, as long as the measurement is taken a minimum distance from the noise source.
- Noise created at multi-unit structures
 - Expands measurement standard to practically address and determine the violation status within multi-unit structures.
- Construction Activities
 - Clarifies emergency repairs and public utility work conducted by local, state and federal government
 - Strengthens requirements to have developers and owners determine and provide industry-standard sound mitigation solutions for noise sources at construction sites.
- Exemptions
 - Introduces a number of limited exemptions to practically align the ordinance with expectations for equitable enforcement and compliance with constitutional standards.

- Prohibited Acts
 - Introduces revisions to enable ordinance enforcement that is equitable and done without the use of sound measurement devices.
 - Introduced language to address loud gatherings affecting residential uses during the nighttime.
 - Added language to address the use of leaf blowers and lawn maintenance equipment.
 - New language is added to address violations of approved noise exemptions.
 - Revised the standards for animal noises to improve enforcement efficacy.
- Criminal Penalties
 - Increases criminal penalty fines from \$ 25.00 to not less than \$100.00 or more than \$2500.00 upon conviction. Additionally, imprisonment is possible in the Arlington County Jail for a period of up to thirty (30) days. Each calendar day in violation constitutes a separate offense for which fines and penalties may be imposed.
- New Civil Penalties
 - Introduces civil penalties which may be assessed after notice is delivered to the owner or responsible party or is posted at the premises. Civil penalties of up to \$250 may be assessed for a first violation and penalties up to \$500 may be assessed for all subsequent violations. The County may also pursue civil relief in the Courts for non-compliance with the ordinance.

FISCAL IMPACT: The advertisement of the public hearing on the revisions to the ordinance is not expected to have any fiscal impact other than the cost of the advertisements themselves. The revisions to the ordinance are expected to result in an increase in complaints and in turn require additional County resources.

The public hearings and documents associated with the approval of the revisions to the noise control ordinance will educate the community and are expected to result in an increase in complaints based on environmental noise. An increase in noise complaints of up to twenty percent (20%) is expected in the first year after adoption, with smaller increases anticipated over the ensuing three-year period.

The new civil penalties, which follow a warning, are expected to reduce repeat offenses and increase the likelihood of efficient resolution of violations. The increased civil penalties are not expected to be a significant source of revenue for the County.

Increased enforcement action will require additional Code Enforcement and Police staff hours to effectively address complaints. The additional staff hours required to administer and enforce the revised noise control ordinance are estimated at less than 1.0 FTE for Code Enforcement (CPHD) and less than 1.0 FTE for the Police Department.

CONCLUSION: Staff recommends that the County Board adopt the attached ordinance to amend, reenact and recodify Chapter 15 (Noise Control) of the Code of Arlington County, Virginia, to be effective upon adoption.

STAFF RECOMMENDED DRAFT ORDINANCE

ORDINANCE TO AMEND, REENACT AND RECODIFY CHAPTER 15 (NOISE CONTROL) OF THE CODE OF ARLINGTON COUNTY, VIRGINIA CONCERNING THE CONTROL AND REGULATION OF ENVIRONMENTAL NUISANCE NOISE AND ITS SOURCES

BE IT ORDAINED by the County Board of Arlington County, Virginia, that:

- (1) Chapter 15 of the Arlington County Code is amended, reenacted, and recodified as follows:

Note: Text in red underline was added for consideration by the County Board at the April 22, 2014 Recessed meeting, and includes various options for advertising purposes.

Chapter 15
NOISE CONTROL

- § 15-1. Short Title.
§ 15-2. Findings, Authorization and Declaration of Policy.
§ 15-3. Definitions.
§ 15-4. Duties and Powers of the County Manager.
§ 15-5. [Reserved.]
§ 15-65. Maximum Noise Levels.
§ 15-76. Prohibited Acts.
§ 15-87. Noise-Suppression Devices.
§ 15-98. Inspections.
§ 15-9. Criminal Penalties.
§ 15-10. Enforcement, Civil Penalties; Appeals Therefrom.
§ 15-11. Emergency Procedures.
§ 15-12. Exemptions Issued by the County Manager.
§ 15-13. Penalties.
§ 15-1413. Severability.
§ 15-1514. Conflict of Ordinance.
§ 15-1615. Exemption for County Activities.

§ 15-1. Short Title.

This chapter shall be known and may be cited as the "Noise Control Ordinance of Arlington County, Virginia."

§ 15-2. Findings, Authorization and Declaration of Policy.

The County Board of Arlington County hereby finds and declares that at certain levels noise can be detrimental to the public's health, safety, welfare and quality of life and, therefore, it is in the public's interest that noise be restricted. For these reasons, there is hereby established in the Arlington County of Arlington, Virginia, a noise control program this Noise Control Ordinance of Arlington County for the purpose of promoting the public's health, safety and welfare, and to foster the comfort of its inhabitants the public. To the maximum extent possible, such noise control program shall be conducted in coordination with any similar programs of other local jurisdictions, the Council of Governments (COG), and of the state and federal governments. Any noise disturbance is a nuisance, and all powers of the County regarding the abatement of nuisances shall apply to noise disturbances.

§ 15-3. Definitions.

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For the purpose of this chapter, the words used in the present tense include the future; words in the singular number include the plural number and vice versa; the word "shall" is mandatory and not directory; and the following phrases and terms shall have the following meanings unless the context clearly indicates otherwise:

~~"Acoustical terminology" is as defined in ANSI S1.1 "Acoustical Terminology" (1971).~~

"ANSI" means the American National Standards Institute or its successor bodies.

~~"Ambient noise" means the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources near and far.~~

"Continuous noise" means a noise whose intensity remains essentially constant during the period of observation. Continuous noise for measurement purposes shall be defined as noise which is measured by the slow response setting of a sound-level meter.

"County Board" means the County Board of Arlington County, Virginia.

"County Manager" means the County Manager of Arlington County, Virginia, or any of his designee or her duly-authorized deputies or agents.

"Daytime" means the local time of day between the hours of 7:00 a.m. and 9:00 p.m. on weekdays and from between the hours of 10:00 a.m. to and 9:00 p.m. on a Saturdays, Sundays and, legal holidays.

"Decibel (dB)" means the unit of sound magnitude equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the sound pressure being measured to a reference sound pressure, twenty (20) micronewtons per square meter (20 micropascals).

"Decibel-A-weighted (dBA)" means the sound level, in decibels, measured with a sound-level meter using the A-weighting network or scale as specified in ANSI S1.4-1974/1983 specification for sound-level meters.

"Impulsive noise" means noise characterized by brief excursionsbursts (usually less than one (1) second in duration) of sound pressure which significantly exceed the sound pressure of the ambient environment sound pressure.

"Legal holiday" shall mean any of the days designated as legal holidays on the Official Web Site of Arlington County <http://www.arlingtonva.us/portals/topics/HolidaySchedule.aspx>.

"Mixed-Use District" shall mean any area of the County that is developed with a mixture of commercial, retails and residential uses, whether in the same building or not, and where the maximum possible noise level, as set forth in Table I of Section 15-5 of this chapter, is 65 decibels or greater.

"Motorcycle" shall have the meaning set forth in § 46.2-100 of the Code of Virginia, 1950, as amended, except that for the purposes of this chapter the definition shall include mean unenclosed motor vehicle having two (2) or three (3) wheels, and includes, but is not limited to, motor scooters and minibikes and mopeds.

"Motor vehicle" shall have the meaning set forth in § 46.2-100 of the Code of Virginia, 1950, as amended.

"Multi-unit structure" means a structure containing three (3) or more separate units, whether residential, commercial, or mixed-use.

"Nighttime" means those times of day excluded from not included in the definition of "Daytime".

"Noise" means the intensity, frequency, duration and/or character of undesired sounds from a single source or number of multiple sources.

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“Noise disturbance” means any sound which:

- (a) ~~Endangers or injures the safety or health of humans or, animals, or property; or~~
- (b) ~~Annoys or disturbs a reasonable person of normal sensitivities; or~~
- (c) ~~Exceeds the applicable maximum permissible noise levels as they appear set forth in Tables I and II of Section 15-5 of this chapter.~~

“Stationary source” means any equipment or activity capable of generating noise, operating or occurring on any parcel of property or public space.

“Zoning district ~~classification or districts~~” means the ~~scheme~~ classifications ~~contained described in Section § 2B2.B.7 of the Arlington County, Virginia, Zoning Ordinance as contained in the appendix of the Arlington County Code, or similar classifications contained in zoning districts in adjoining jurisdictions.~~

§ 15-4. Duties and Powers of the County Manager.

A. ~~The administration and enforcement of this chapter shall be the duty of the County Manager, who is hereby authorized to take such actions, including the promulgation of rules and regulations necessary to enforce the provisions of this chapter.~~

B. ~~In addition to any other powers vested in him by law, the County Manager shall:~~

- 1. ~~Conduct studies, investigations and research relating to noise and its prevention, abatement and control.~~
- 2. ~~Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings.~~
- 3. ~~Hold hearings relating to any aspect of or matter in the administration of this chapter.~~
- 4. ~~Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.~~
- 5. ~~Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of noise.~~
- 6. ~~Advise, consult and cooperate with other local governmental units, agencies of the state, industries, interstate or interlocal agencies and the federal government and with interested persons or groups.~~
- 7. ~~Review those matters having a bearing upon excessive noise referred by public agencies.~~
- 8. ~~Collect and disseminate information and conduct educational and training programs relating to excessive noise, its effects and its control.~~
- 9. ~~Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this chapter.~~
- 10. ~~Do any and all acts which may be necessary for the successful prosecution of the intent of this chapter and such other acts as may be specifically enumerated herein.~~

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11. ~~Allocate police department resources, as shall be required to assist his duly authorized agent upon request by same, in the enforcement of this chapter.~~

~~§ 15-5. Reserved.~~

§ 15-65. Maximum Noise Levels.

A. ~~Noise sources other than motor vehicles.~~ Noise levels from stationary sources other than motor vehicles, and mobile sources while stationary unless exempt pursuant to §§ 15-5.F. or 15-15, shall not exceed those the noise limits presented set forth in Table I below for each of the zoning districts listed there indicated during the time of day indicated. The maximum permissible noise level shall be that associated with the zoning district classification of the receiving property that receives the noise, except for vehicles on public or private streets.

B. ~~Small power equipment.~~ Motor vehicle noise sources. Motor vehicle noise sources are subject to the noise limits set forth in Table II below.

1. ~~Any small power equipment which exceeds the permissible noise levels established in § 15-6.A may only be operated during the daytime.~~
2. ~~Noise measurements made to determine compliance with §§ 15-6.A and 15-6.B.1 shall be made not less than four (4) feet above the ground and not closer to the noise source than the boundary of the property on which the noise source is located.~~

C. ~~Mobile sources.~~ Mobile sources are noise levels generated by moving vehicles which conform to the standards set forth in Table II.

D. ~~Measurement standards.~~

1. Any noise measurements made to determine compliance with § 15-5.C.A. shall be taken on a level surface at a distance of not less than fifty (50) feet from the noise from any built street at its curb or on the edge of the pavement or from any location on the property that receives the noise, unless the property that receives the noise is located in a multi-unit structure, in which case the measurements shall be made pursuant to subsection C.3. of this section.
2. Any noise measurement made to determine compliance with subsection B. of this section shall be taken at a distance of at least fifty (50) feet from the noise source.
3. Any noise measurement made to determine compliance with Table I in any structure utilized as a multi-unit structure shall be taken from a common area within or outside the structure, or from any other unit within the respective multi-unit structure when the owner or tenant of the unit from which the measurement is to be taken consents to measurement from his, her or its unit. Within such unit, the measurement shall be taken at a point at least four (4) feet from the wall, ceiling, floor, or window that is believed to be closest to the noise source, with doors to the receiving unit closed and windows in a position typical for the then-current season of the year.

E. ~~Noise sensitive zones:~~

1. ~~Whenever the protection of the public health and welfare so require, the County Manager, after a duly advertised public hearing conducted by the county board, with the approval of the county board, may designate any geographical area of Arlington County as a noise sensitive zone. Such designation shall include a description of the subject area and the reasons for determination as a noise sensitive zone.~~

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2. ~~In noise sensitive zones, noise levels originating from stationary sources shall not exceed those presented in Table I of this chapter.~~

~~F.D.~~ *Construction noise:*

1. Any construction activities which produce noise levels which exceeds the ~~maximum permissible noise levels~~ limits established in Table I shall be permitted only during the ~~Daytime~~. This section shall not apply to emergency repairs to public utilities ~~and infrastructure performed by the public utilities themselves or by local, state, or federal governments, or their contractors.~~ For the purposes of this subsection, "public utility" shall have the meaning set forth in § 56-88 of the Code of Virginia, 1950, as amended.
2. All feasible procedures ~~and measures customarily used in the industry~~ shall be undertaken ~~by those responsible for operating or creating any source of sound, in order to minimize noise generated by construction activities.~~ In no ~~instance~~ event shall noise ~~levels~~ originating from construction sites exceed ninety (90) dBA. Measurements of ~~construction-related noise~~ are to be taken in accordance with the procedures established in § 15-65.BC.2.

~~G.E.~~ *Special events.* Short-term or seasonal activities which have been reviewed and permitted through the Arlington County government's special-event review process ~~sponsored by a County agency or any organization, which have been reviewed and approved through the special event review process~~ may not exceed ninety (90) dBA for the duration of the event and associated clean-up. ~~In the event of a discrepancy between 90 dBA and the applicable Daytime maximum noise set forth in Tables I and II, the 90-dBA limit shall control.~~ Such events ~~and their associated clean-up~~ may not exceed the applicable noise set forth in Tables I and II if they extend ~~beyond~~ later than 9:00 p.m. on Sunday through Thursday, and ~~later than~~ 10:00 p.m. on a Fridays, Saturdays and legal holidays or day immediately preceding a legal holiday.

~~F.~~ *Exemptions.* In addition to the exemptions procedure set forth in § 15-12, the following activities or sources of noise shall be exempt from the prohibitions set forth in this § 15-5, Tables I and II of this section, and § 15-6:

1. ~~Athletic contests and other activities officially sponsored, authorized, or otherwise sanctioned by the Arlington County Department of Parks and Recreation;~~
2. ~~Church bells or carillons;~~
3. ~~Religious or political gatherings and other activities protected by the First Amendment to the Constitution of the United States of America;~~
4. ~~Activities for which the regulation of noise has been preempted by Virginia or federal law;~~
5. ~~Audible signal devices which are employed as warning or alarm signals in case of fire, emergency, collision, theft, or burglary, or imminent danger, and the testing of such signals, and or noise that is emitted in conjunction with a duly-authorized parade; and~~
6. ~~Electricity-generating systems used to provide emergency backup electric power.~~
7. ~~Athletic contests conducted at privately owned swim clubs shall be exempt from the prohibitions set forth in Section 15-6 if held between 6:00 a.m. and 10:00 p.m.~~

TABLE I
MAXIMUM PERMISSIBLE NOISE LEVELS FROM STATIONARY SOURCES ALL SOURCES
OTHER THAN MOTOR VEHICLES

Zoning District	Time of Day	Continuous Noise (dBA)	Impulsive Noise (dB)	'Continuous' Center-Octave	
				Octave Band Center Frequency (Hz)	Octave Band Center dBA component
CM & M	All	70	120	31.5	85
				63	84
				125	79
				250	74
				500	68
				1,000	62
				2,000	57
				4,000	53
				8,000	50
C & C-O	All	65	100	31.5	80
				63	79
				125	74
				250	69
				500	63
				1,000	57
				2,000	52
				4,000	48
				8,000	45
R, R-A & S 3A	Daytime	60	95	31.5	75
				63	74
				125	69
				250	64
				500	58
				1,000	52
				2,000	47
				4,000	43
				8,000	40
FR, R-A & S 3A	Nighttime	55	90	31.5	70
				63	69
				125	64
				250	59
				500	53
				1,000	47
				2,000	42
				4,000	38
				8,000	35
Noise Sensitive Zones	All			8,000	35

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**TABLE I
MAXIMUM PERMISSIBLE NOISE LEVELS FROM STATIONARY SOURCES ALL SOURCES
OTHER THAN MOTOR VEHICLES**

Zoning District	Time of Day	Continuous Noise (dBA)	Impulsive Noise (dB)	'Continuous' Center Octave	
				Octave Band Center Frequency (Hz)	dBA component
CM, M-1 & M-2 P-S	All	70	120	31.5	85
				63	84
				125	79
				250	74
				500	68
				1,000	62
				2,000	57
				4,000	53
				8,000	50
C-1, C-2, C-3 C-1-O, C-1-R, C-TH C-O-1.0, C-O-1.5, C-O-2.5, C-O, C-O-A, C-R C-O-Rosslyn, C-O-Crystal City RA-H, RA-H-3.2, RA4.8 MU-VS, & R-C	All	65	100	31.5	80
				63	79
				125	74
				250	69
				500	63
				1,000	57
				2,000	52
				4,000	48
				8,000	45
R-5, R-6, R-8, R-10, R-20, R2-7 R-15-30T, R-10T RA14-26, RA8-18 RA6-15, RA7-16 S-3A & S-D	Daytime	60	95	31.5	75
				63	74
				125	69
				250	64
				500	58
				2,000	47
				4,000	43
				8,000	40
				R-5, R-6, R-8 R-10, R-20, R2-7 R-15-30T, R-10T RA14-26, RA8-18 RA6-15, RA7-16 S-3A & S-D	Nighttime
63	69				
125	64				
250	59				
500	53				
2,000	42				
4,000	38				
8,000	35				

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**TABLE II
MAXIMUM PERMISSIBLE NOISE LEVELS FROM MOBILE SOURCES MOTOR VEHICLES**

<u>Class of Source Vehicle</u>	<u>Up to 35 miles per hour MPH</u>	<u>Above 35 MPH miles per hour & above</u>
Motorcycle	80 dBA	84 dBA
Mobile sources with gross weight less than <u>Total GVW < 10,000 lbs.</u>	70 dBA	79 dBA
Mobile sources with gross weight more than <u>Total GVW ≥ 10,000 lbs.</u>	86 dBA	90 dBA

[1-1-75; 8-14-76; 8-25-81; Ord. No. 04-24, 9-18-04; Ord. No. 13-___, XX-XX-13]

§ 15-76. Prohibited Acts.

A. It shall be unlawful for any person, group of persons, or entity to make or continue, or cause to be made or continued, any noise disturbance, as that term is defined above.

B. In addition, the following prohibited acts set forth in this § 15-6 are prohibited regardless of the zoning district classification of the property from which noise is emitted or the decibel level of that noise. For purposes of the measurements set forth below, if the source of the sound is not visible, then the measurement shall be taken from the exterior wall of the building, structure or other enclosure in which the source of the sound is located.

C. It shall be unlawful for any person to sound a vehicular horn or other audible signal device except as an emergency warning signal permitted pursuant to § 15-5.F.5.

D. It shall be unlawful for any person to sell anything by outcry during the nighttime. The selling by outcry of merchandise, food and beverages at licensed entertainment events is excluded from the prohibition of this subsection.

E. It shall be unlawful for any person to use any machine or device during the nighttime for the production or reproduction of sound which is cast upon public streets or lands for the purpose of commercial advertising or of attracting the attention of the public to any building, structure or activity during the nighttime. If such machine or device is used only intermittently for announcing or paging an individual, or signals the ringing of a telephone, or the commencement or conclusion of work or school, or is permitted by § 15-5.F., it shall be exempt from the prohibition of this subsection.

F. It shall be unlawful for any person to use, operate, or play, or to permit the use, operation or playing of, any radio, television, phonograph, record, compact disc or tape player, drum, musical instrument, loudspeaker, sound amplifier or similar device or machine which produces, reproduces or amplifies sound in such a manner as to create a noise disturbance be heard within any nearby dwelling unit, house or apartment of another person at least 20 feet from the source of the sound, or at least 50 feet from the source of the sound and either across any real property boundary or at the curb or on the edge of the pavement of any built street.

G. It shall be unlawful for any person or group of persons to unreasonably make, continue or cause to be made or continued any noise disturbance.

H. It shall be unlawful for any person in a group of four or more persons (alternative option: person) to engage, in any "R" zoning district during the nighttime, in yelling, wailing, shouting, or screaming such that the yelling, wailing, shouting or screaming is heard in any "R" or "RA" District including "RA14-26", "RA8-

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18", "RA6-15" and "RA7-16" within any nearby dwelling unit, house or apartment of another person at least 20 feet from the source of the sound, or at least 50 feet from the source of the sound and either across any real property boundary or at the curb or on the edge of the pavement of any built street.

FH. It shall be unlawful for any person to collect refuse with a refuse vehicle during the ~~n~~Nighttime, subject, however, to the exemption set forth in § 15-15.

GI. It shall be unlawful for any operator to run the propulsion engine of a commercial motor vehicle for more than ~~thirteen (310)~~ minutes when the vehicle is parked, left unattended, or is stopped for other than traffic or maintenance reasons, except when the propulsion engine provides auxiliary service other than heating; or air conditioning.

J. It shall be unlawful for any person to perform lawn or garden maintenance using motorized equipment during the Nighttime.

K. It shall be unlawful to operate a motorized leaf-blowing device in any "R" zoning district during the Nighttime.

HL. It shall be unlawful for any person who owns, possesses or harbors any animal or bird to permit that animal or bird to create a ~~frequent or continued noise disturbance~~ that it is audible at least once per minute for ten (10) consecutive minutes within any dwelling unit, house or apartment of another person, at any street edge, or across a real property boundary ~~or within a nearby dwelling unit.~~

M. It shall be unlawful for the holder of any exemption issued pursuant to § 15-12 to exceed or otherwise violate the terms of that exemption.

N. It shall be unlawful for any person to engage in yelling, wailing, shouting, or screaming in any Mixed Use District **between the hours of Midnight and 9:00 a.m.** such that the yelling, wailing, shouting, or screaming can be heard within any dwelling unit, lodging unit, house or apartment of another person at least ~~(option 1-50 feet) (option 2-100 feet) (option 3-200 feet)~~ from the source of the sound, unless otherwise provided for by the Special Events Policy.

O. It shall be unlawful for the owner, manager, assistant manager, and other person in charge of a retail use located within any Mixed Use District, which includes an outdoor café, exterior rooftop seating area, or other use or activity in the exterior of the retail use to permit any person, while in the outdoor café, exterior rooftop seating area, or other exterior location, to engage in yelling, wailing, shouting, or screaming **between the hours of Midnight and 6:00 a.m.-9:00 a.m.** such that the yelling, wailing, shouting, or screaming can be heard within any nearby dwelling unit, lodging unit, house or apartment of another person at least ~~(option 1-50 feet) (option 2-100 feet) (option 3-200 feet)~~ from the source of the sound, unless otherwise provided for by the Special Events Policy.

P. It shall be unlawful for any person to engage in yelling, wailing, shouting, or screaming in the County between the hours of **2:00 a.m.** and 6:00 a.m., such that the yelling, wailing, shouting, or screaming can be heard within any nearby dwelling unit, lodging unit, house or apartment of another person, unless otherwise provided for by the Special Events Policy.

§ 15-87. Noise-Suppression Devices.

A. No person shall cause, suffer, allow or permit the removal, disconnection or disabling of any noise ~~-~~suppression system or device which has been installed on any noise source:

1. ~~i~~n accordance with federal ~~-~~, state or local laws or regulations, ~~, or~~
2. ~~A~~s a requirement for obtaining a permit to construct, modify ~~-~~, install or operate such noise source.

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B. No person shall defeat the design purpose of any noise-suppression system or device by installing therein or thereon any part or component which does not meet the minimum design specifications for that system or device.

C. No noise source shall be operated with its noise-suppression system or device removed or otherwise rendered inoperable.

§ 15-98. Inspections.

A. The County Manager is hereby authorized and directed to make or cause to be made inspections (1) in response to complaints regarding that an alleged violations of the provisions of this chapter, so long as the County Manager or of applicable rules or regulations pursuant thereto which may exist when he has valid reason to believe that a violation of this chapter has been or is being committed, or (2) as part of a systematic noise disturbance survey program.

B. The County Manager ~~shall have authority~~ may, with the consent of the respective owner, occupant, operator or agent, ~~to enter and inspect all premises subject to the provisions of this chapter for the purpose of determining whether there is compliance with~~ this chapter's requirements.

C. If any owner, occupant, operator or agent fails to allow or refuses free access and entry to the premises, or any part thereof, where a noise source is located, ~~or any part thereof~~, and with respect to which an inspection authorized by this chapter is sought to be made, the County Manager may, upon a showing that probable cause exists for the inspection, petition and obtain process or an order or warrant from a magistrate or court of competent jurisdiction authorizing such an inspection.

D. ~~All evidence which may be discovered or obtained in the course of an inspection made pursuant to this section shall not be disclosed except as may be necessary in the judgment of the County Manager or the Attorney for the Commonwealth for the proper and effective administration and enforcement of the provisions of this chapter and regulations issued pursuant thereto.~~

§ 15-109. ~~Enforcement~~ Criminal Penalties.

A. Any violation of this chapter may be charged as a misdemeanor, and any violator may, upon conviction, be punished by a fine of not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500), or by imprisonment in the Arlington County jail for a period of not more than thirty (30) days, or both, for each offense. Each calendar day of violation shall constitute a separate offense.

B. ~~Whenever the County Manager or his agent determines that any noise source fails to meet the requirements set forth in this chapter or in applicable regulations issued pursuant thereto, he may obtain a warrant or summons for the prosecution of such violation. In addition, if the agent investigating a potential violation of this chapter is a duly-qualified law enforcement officer of Arlington County and he or she has probable cause to do so, he or she may issue a summons to, or arrest without a warrant, any person who, in the presence of the officer, violates any provision of this chapter.~~

C. The imposition of a criminal penalty for any violation of this chapter shall not excuse the violation or permit it to continue.

D. Nothing in this section shall be construed to abridge, limit or otherwise impair the right of any person or entity to claim, in a separate, private action, damages or other relief on account of injuries to persons or property, and to maintain any action or other appropriate proceeding therefor.

~~Furthermore, the County Manager or his agent may issue a notice of violation setting forth the alleged failures and advising the owner, occupant, operator or agent that such failures must be corrected. Such notice shall:~~

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1. ~~Be in writing;~~
2. ~~Set forth the alleged violations of this chapter or of applicable regulations issued pursuant thereto;~~
3. ~~Describe the premises where the violations are alleged to exist and/or other identifications of the noise source;~~
4. ~~Set forth a reasonable time within which any violation alleged is required to be corrected;~~
5. ~~Be served upon the owner, occupant or operator of the noise source, or upon the agent of any of the foregoing, by:~~
 - a. ~~Personally delivering the same to such person; or~~
 - b. ~~Mailing the same to such person by certified mail, return receipt requested, addressed to the last known place of residence of such person; or~~
 - c. ~~Posting the same in or about the premises described in the notice if service under § 15-10.A.5a. or b.~~
- B. ~~At the end of the period of time allowed for correction of any violation alleged, the County Manager shall reinspect the noise source described in the notice.~~
- C. ~~Reserved.~~
- D. ~~Reserved.~~
- E. ~~Reserved.~~
- F. ~~Referral to Commonwealth's Attorney, injunction, etc. If the County Manager determines that the violation has not been corrected, the County Manager may:~~
 1. ~~Refer the matter to the Commonwealth's Attorney for prosecution pursuant to § 15-13.A; or~~
 2. ~~Apply to a court of competent jurisdiction for any and all injunctive relief as the court may deem proper to enforce the provisions of this chapter; or~~
 3. ~~Extend the time for compliance for a reasonable time.~~

§ 15-10. Civil Penalties; Appeals Therefrom.

A. Any person who commits, permits, assists in or attempts any violation of this chapter, whether by act or omission, shall be liable for a civil violation and may, upon the issuance of a citation by the County Manager, be punished by a civil fine of not more than two hundred fifty dollars (\$250.00) for the first violation, and not more than five hundred dollars (\$500.00) for a second or other subsequent violation. Each calendar day of violation shall constitute a separate offense.

B. The issuance of a citation for a civil violation of this chapter may occur only after a notice of violation has been issued that sets forth the alleged violation or violations and advises the owner, occupant, operator or agent that such violation or violations must be corrected. Such notice of violation shall:

1. be in writing;
2. describe the alleged violation or violations;

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3. name, by street address or RPC number, the premises where the violation or violations are alleged to exist;
4. state a deadline by which the violation or violations must be corrected; and
5. be delivered to the owner, occupant, operator or party responsible for the noise, or upon the agent of any of the foregoing, by:
 - a. hand delivery to any such person or entity;
 - b. mailing to such person or entity by U.S. certified mail; or
 - c. posting at the premises named in the notice.

C. The imposition of a civil penalty for any violation of this chapter shall not excuse the violation or permit it to continue.

D. Nothing in this chapter shall be construed to abridge, limit or otherwise impair the right of any person or entity to claim, in a separate, private action, damages or other relief on account of injuries to persons or property, and to maintain any action or other appropriate proceeding therefor.

E. If a person who was issued a civil citation pursuant to this section does not abate the violation and either admit liability or choose not to contest the citation, then a summons shall be issued to the person by the County Manager and the civil violation shall be tried in the General District Court of Arlington County. Any party desiring to appeal that Court's decision on a civil violation of this section may appeal as provided at law for civil actions.

F. During the pendency of any appeal, the civil citation issued by the County Manager shall remain in full force and effect.

§ 15-11. Emergency Procedures.

A. Whenever, in the judgment of the County Manager, an emergency exists which requires immediate action to protect the public health, safety or welfare, ~~the County Manager may issue an order~~ may be issued, without notice, conference or hearing, directing the owner, occupant, operator or agent and/or responsible party of and/or for the noise source or premises where the noise source is located to take such action as is appropriate to correct or abate the emergency. If circumstances warrant, the County Manager may act to correct or abate the emergency.

B. The owner, occupant, operator or agent ~~and/or responsible party of and/or for the noise source and/or the premises where the noise source is located~~ shall be granted a conference on the matter with the County Manager upon his, her or its request, as soon as practicable, but such conference shall in no case stay the ~~correction or abatement or correction~~ correction or abatement of such emergency.

C. Any person aggrieved by an order of the County Manager, ~~issued pursuant to any provision of this chapter,~~ may appeal that order to a court of competent jurisdiction.

§ 15-12. Exemptions Issued by the County Manager.

A. Any person responsible for any noise source may apply to the County Manager for an exemption or partial exemption from the provisions of this chapter. The application shall be accompanied by such information and data as the County Manager may require. The County Manager may grant such exemption or partial exemption if he or she finds that:

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1. The potential danger to the community is outweighed by the benefit to the public interest during the period of exemption, or
2. Compliance with the provisions of this chapter from which exemption is sought would produce serious hardship without equal or greater benefits to the public.

B. No exemption or partial exemption issued pursuant to this section shall be granted for a period ~~to exceed~~ longer than one (1) year; but any such exemption or partial exemption may be renewed for ~~like periods~~ a period of up to one (1) additional year at a time if, after being duly considered at a hearing held by the County Manager, ~~the County Manager~~ the County Manager finds that renewal is justified ~~under~~ pursuant to the factors set forth in § 15-12.A. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty (60) days prior to the expiration of the exemption or partial exemption. Any renewal granted pursuant to this section shall be on the same grounds and subject to the same limitations and requirements as provided in § 15-12.A.

C. An exemption, partial exemption or renewal thereof shall not be a right of the applicant or holder thereof but shall be at the discretion of the County Manager. The recipient of any exemption or partial exemption shall post a copy of the exemption or partial exemption to be posted with ~~at~~ the source of the noise.

D. ~~Audible signal devices which are employed as warning or alarm signals in case of fire, collision or imminent danger are specifically exempt from the provisions of this chapter.~~

E. ~~Nothing in this section, and no exemption, partial exemption or renewal granted pursuant hereto, shall be construed to prevent or limit the application of the emergency provision and procedures of § 15-11A. of this chapter to any person or his, her or its property.~~

§ 15-13. Penalties.

A. ~~All violations of this chapter shall be misdemeanors and shall, upon conviction, be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than two thousand five hundred dollars (\$2,500.00), or by imprisonment in the county jail for a period of not more than thirty (30) days, or both, for each offense; and each day of violation shall constitute a separate offense.~~

B. ~~The imposition of one (1) penalty for any violation shall not excuse the violation or permit it to continue.~~

C. ~~Nothing in this chapter shall be construed to abridge, limit or otherwise impair the right of any person to damages or other relief on account of injuries to persons or property and to maintain any action or other appropriate proceeding therefor.~~

§ 15-1413. Severability.

Should any section, subsection, sentence, clause or phrase of this chapter be declared invalid or unconstitutional by a court of competent jurisdiction, such ~~decision~~ declaration shall not affect the validity of the chapter in its entirety or of any part thereof other than that separat declared to be invalid.

§ 15-1514. Conflict of Ordinance.

In any case where a provision of this chapter is found to be in conflict with any other provision of the Arlington County Code, the provision which establishes the more stringent standard for the promotion and protection of the health and safety of the people ~~public~~ shall prevail. In any case where a provision of this chapter is found to be in conflict with any other provision of the Arlington County Code which established a less stringent standard for the promotion and protection of the health and safety of the people ~~public~~, the provisions of this chapter

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shall be deemed to prevail; and such other provisions are hereby declared to be repealed to the extent that they may be found in conflict with this chapter.

§ ~~15-46~~15. Exemption for County Activities.

The provisions of this chapter shall not apply to operations at County facilities ~~as designated by the County Manager and~~ engaged in by County employees or County contractors, or to County residential refuse and leaf collection programs if such programs are operated by the County or by an entity under contract ~~to~~with the County.

APPENDIX A: COMPARATORS

	ARLINGTON VA	Washington DC	Alexandria VA	Fairfax VA	Richmond VA	New York NY	Baltimore MD	Virginia Beach VA	Philadelphia PA	Los Angeles CA	Montgomery MD
COMMUNITY TYPE	COUNTY	City	City	County	City	City	City	City	City	City	County
POPULATION	207627	601723	139966	1081726	204214	8175133	620961	437954	1526006	3792621	971777
LAND	25.9	61.1	15.0	390.9	59.8	302.6	80.9	249.0	134.1	468.7	491.3
DENSITY	7993.6	9856.5	9314.3	2766.8	3414.7	27012.5	7671.5	1758.9	11379.5	8092.0	1978.2
JURISDICTION RULE	Dillon	Home	Dillon	Dillon	Dillon	Home	Home	Dillon	Home	Home	Home
REASONABLE PERSON STANDARD	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
DECIBEL STANDARD	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
PROHIBITED ACTS STANDARD	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
MAXIMUM DECIBEL LIMIT	90 db	-	90 db	90 db	-	90 db	75 db	-	-	-	85 db
RESIDENTIAL DECIBEL MAX DAY	60 db	60 db	55 db	55 db	65 db	plus 6 db above ambient	56 db	65 db	plus 3 db above ambient	plus 5 db above ambient	65 db
RESIDENTIAL DECIBEL MAX NIGHT	55 db	55 db	55 db	55 db	65 db	plus 6 db above ambient	61 db	55 db	plus 3 db above ambient	plus 5 db above ambient	55 db
COMMERCIAL DECIBEL LIMIT	65 db	65 db	60 db	60 db	75 db	74 db	64 db	80 db	plus 10 db above ambient	plus 5 db above ambient	67 db
INDUSTRIAL DECIBEL LIMIT	70 db	70 db	70 db	72 db	75 db	-	75 db	-	plus 10 db above ambient	plus 5 db above ambient	67 db
EXEMPTIONS GRANTED	Yes	Yes	Yes	Yes	-	Yes	Yes	-	Yes	Yes	Yes
CONSTRUCTION EXEMPTIONS	Yes	Yes	Yes	Yes	Yes Limited Term	Yes	Yes	-	-	Yes	Yes
SPECIAL EVENT AUTHORIZATIONS	Yes	-	-	-	Yes	-	Yes	Yes	Yes	Yes	Yes
PUBLIC FACILITY EXEMPTION	Yes	-	Yes	-	Yes	-	Yes	Yes	Yes	Yes	Yes
SMALL POWER EQUIPMENT	Yes Limited Hours	Yes Limited Hours	Yes Limited Hours	-	Yes Limited Hours	-	Yes	Yes	Yes	Yes	Yes Limited Hours
IDLING VEHICLES	Regulated	Not Regulated	-	-	-	-	Not Regulated	Not Regulated	Regulated	Regulated	Regulated
REFUSE COLLECTION	Yes Limited Hours	Not Regulated	Yes Limited Hours	Regulated	-	Regulated	Not Regulated	Not Regulated	-	Regulated	Regulated
BARKING DOGS	Regulated	Not Regulated	Regulated	Regulated	Regulated	-	Not Regulated	Not Regulated	Regulated	Regulated	Regulated
HONKING HORNS	Regulated	Regulated	Regulated	-	Regulated	Regulated	Regulated	Regulated	Regulated	Regulated	Regulated
FINES FOR PENALTY	Civil Criminal	Civil Criminal	Civil Criminal	Civil Criminal	Criminal	Civil	Civil Criminal	Civil Criminal	Civil	Civil	Civil
CIVIL PENALTIES	\$250 and \$500	For Injunctive Relief	\$50, \$100 and \$500 max	For Injunctive Relief	-	Up to \$24,000 max	For Injunctive Relief	For Injunctive Relief	\$100 and \$700 max	\$100 and Injunctions	For Injunctive Relief
CRIMINAL PENALTIES	Up to \$2500 and/or Jail	Up to \$1000 and/or Jail	Up to \$1000 and/or Jail	Up to \$1000 and/or Jail	Up to \$2500 and/or Jail	-	Up to \$1000	Up to \$2500 and/or Jail	-	-	-
CODE ENFORCEMENT AGENCIES	Police, Code	Police, Environmental	Police, Environmental, Construction	Police, Zoning	Police	Environmental	Police, Health	Police	Police, Health, Code	Police, Code, Animal Welfare	Police, Code

Number of LOUD calls by Month and Year

MONTH	2011	2012	2013	2014*	TOTAL	Average
January	184	163	207	137	691	184.7
February	180	182	191		553	184.3
March	203	241	211		655	218.3
April	262	228	235		725	241.7
May	303	261	253		817	272.3
June	228	248	234		710	236.7
July	277	189	218		684	228.0
August	218	188	242		648	216.0
September	243	251	213		707	235.7
October	241	284	248		773	257.7
November	169	223	239		631	210.3
December	239	234	185		658	219.3
TOTAL	4758	4704	4689	137	8252	Average

* 2014 calls until 1/29/2014, not included in the average calls summary.

ACPD Top LOUD calls by location (3 yr. review)

2011	Location	# Calls
1	3215 24th Street S.	30
2	2001 Columbia Pike	20
3	1900 S. Eads Street	19
4	3100 Wilson Boulevard	18
5	2900 S. Glebe Road	17
2012	Location	# Calls
1	3215 24th Street S.	32
2	1201 S. Scott Street	20
3	750 S. Dickerson Street	17
4	2300 Clarendon Boulevard	16
5	N. Highland Street & Washington Boulevard	16
6	1320 N. Veitch Street	16
2013	Location	# Calls
1	4100 Fairfax Drive	45
2	5216 Wilson Boulevard	37
3	4500 S. Four Mile Run Drive	35
4	1210 N. Garfield Street	28
5	3215 24th Street S.	26

ADVERTISED ORDINANCE

ORDINANCE TO AMEND, REENACT AND RECODIFY CHAPTER 15 (NOISE CONTROL) OF THE CODE OF ARLINGTON COUNTY, VIRGINIA CONCERNING THE CONTROL AND REGULATION OF ENVIRONMENTAL NUISANCE NOISE AND ITS SOURCES

BE IT ORDAINED by the County Board of Arlington County, Virginia, that:

- (1) *Chapter 15 of the Arlington County Code is amended, reenacted, and recodified as follows:*

Note: Text in red underline was added for consideration by the County Board at the April 22, 2014 Recessed meeting, and includes various options for advertising purposes.

Chapter 15 NOISE CONTROL

§ 15-1.	Short Title.
§ 15-2.	<u>Findings, Authorization and Declaration of Policy.</u>
§ 15-3.	Definitions.
§ 15-4.	Duties and Powers of the County Manager.
§ 15-5.	[Reserved.]
§ 15-65.	Maximum Noise Levels.
§ 15-76.	Prohibited Acts.
§ 15-87.	Noise-Suppression Devices.
§ 15-98.	Inspections.
§ 15-9.	<u>Criminal Penalties.</u>
§ 15-10.	Enforcement. <u>Civil Penalties; Appeals Therefrom.</u>
§ 15-11.	Emergency Procedures.
§ 15-12.	Exemptions <u>Issued by the County Manager.</u>
§ 15-13.	Penalties.
§ 15-1413.	Severability.
§ 15-1514.	Conflict of Ordinance.
§ 15-1615.	Exemption for County Activities.

§ 15-1. Short Title.

This chapter shall be known and may be cited as the "Noise Control Ordinance of Arlington County, Virginia."

§ 15-2. Findings, Authorization and Declaration of Policy.

The County Board of Arlington County hereby finds and declares that at certain levels noise can be detrimental to the public's health, safety, welfare and quality of life and, therefore, it is in the public's interest that noise be restricted. For these reasons, there is hereby established in the Arlington County of Arlington, Virginia, a noise control program this Noise Control Ordinance of Arlington County for the purpose of promoting the public's health, safety and welfare, and to foster the comfort of its inhabitants the public. To the maximum extent possible, such noise control program shall be conducted in coordination with any similar programs of other local jurisdictions, the Council of Governments (COG), and of the state and federal governments. Any noise disturbance is a nuisance, and all powers of the County regarding the abatement of nuisances shall apply to noise disturbances.

§ 15-3. Definitions.

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For the purpose of this chapter, the words used in the present tense include the future; words in the singular number include the plural number and vice versa; the word "shall" is mandatory and not directory; and the following phrases and terms shall have the following meanings unless the context clearly indicates otherwise:

~~"Acoustical terminology" is as defined in ANSI S1.1 "Acoustical Terminology" (1971).~~

"ANSI" means the American National Standards Institute or its successor bodies.

~~"Ambient noise" means the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources near and far.~~

"Continuous noise" means a noise whose intensity remains essentially constant during the period of observation. Continuous noise for measurement purposes shall be defined as noise which is measured by the slow response setting of a sound-level meter.

"County Board" means the County Board of Arlington County, Virginia.

"County Manager" means the County Manager of Arlington County, Virginia, or any of his designee or her duly-authorized deputies or agents.

~~"Daytime" means the local time of day between the hours of 7:00 a.m. and 9:00 p.m. on weekdays and from between the hours of 10:00 a.m. to and 9:00 p.m. on a Saturdays, Sundays and, legal holidays.~~

"Decibel (dB)" means the unit of sound magnitude equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the sound pressure being measured to a reference sound pressure, twenty (20) micronewtons per square meter (20 micropascals).

~~"Decibel-A-weighted (dBA)" means the sound level, in decibels, measured with a sound-level meter using the A-weighting network or scale as specified in ANSI S1.4-1974/1983 specification for sound-level level meters.~~

~~"Impulsive noise" means noise characterized by brief excursionsbursts (usually less than one (1) second in duration) of sound pressure which significantly exceed the sound pressure of the ambient environment-sound pressure.~~

"Legal holiday" shall mean any of the days designated as legal holidays on the Official Web Site of Arlington County <http://www.arlingtonva.us/portals/topics/HolidaySchedule.aspx>.

OPTIONS FOR DEFINITION OF "MIXED USE DISTRICT":

OPTION A

"Mixed-Use District" shall mean any zoning district that includes a combination of office, retail, or similar commercial related use and a residential use, as approved by the County Board, whether public, private or a combination thereof and where the maximum permissible noise level, as set forth in Table 1 of Section 15-5 of this chapter, is 65 decibels or greater.

OPTION B

"Mixed-Use District" shall mean any area of the County that is developed with a mixture of commercial, retails and residential uses, whether in the same building or not and where the maximum possible noise level, as set forth in Table 1 of Section 15-5 of this chapter, is 65 decibels or greater.

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OPTION C

“Mixed-Use District” shall mean any area of the County that is developed with a mixture of commercial, retail and residential uses, whether in the same building or not, and which is located in established Metro Station areas, Shirlington, East Falls Church and the designated Commercial Nodes of Columbia Pike and where the maximum possible noise level, as set forth in Table I of Section 15-5 of this chapter, is 65 decibels or greater.

“Motorcycle” shall have the meaning set forth in § 46.2-100 of the Code of Virginia, 1950, as amended, except that for the purposes of this chapter the definition shall include mean an enclosed motor vehicle having two (2) or three (3) wheels, and includes, but is not limited to, motor scooters and minibikes and mopeds.

“Motor vehicle” shall have the meaning set forth in § 46.2-100 of the Code of Virginia, 1950, as amended.

“Multi-unit structure” means a structure containing three (3) or more separate units, whether residential, commercial, or mixed-use.

“Nighttime” means those times of day excluded from not included in the definition of “dDaytime”.

“Noise” means the intensity, frequency, duration and/or character of undesired sounds from a single source or number of multiple sources.

“Noise disturbance” means any sound which:

- (a) — Endangers or injures the safety or health of humans or, animals, or property; or
- (b) — Annoys or disturbs a reasonable person of normal sensitivities; or
- (c) — Exceeds the applicable maximum permissible noise levels as they appear set forth in Tables I and II of Section 15-5 of this chapter.

“Stationary source” means any equipment or activity capable of generating noise, operating or occurring on any parcel of property or public space.

“Zoning district classification or districts” means the scheme classifications contained described in Section § 2B2.B.7 of the Arlington County, Virginia, Zoning Ordinance as contained in the appendix of the Arlington County Code, or similar classifications contained in zoning districts in adjoining jurisdictions.

§ 15-4. Duties and Powers of the County Manager.

A. — The administration and enforcement of this chapter shall be the duty of the County Manager, who is hereby authorized to take such actions, including the promulgation of rules and regulations necessary to enforce the provisions of this chapter.

B. — In addition to any other powers vested in him by law, the County Manager shall:

- 1. — Conduct studies, investigations and research relating to noise and its prevention, abatement and control.
- 2. — Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings.
- 3. — Hold hearings relating to any aspect of or matter in the administration of this chapter.

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4. — Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.
5. — Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of noise.
6. — Advise, consult and cooperate with other local governmental units, agencies of the state, industries, interstate or interlocal agencies and the federal government and with interested persons or groups.
7. — Review those matters having a bearing upon excessive noise referred by public agencies.
8. — Collect and disseminate information and conduct educational and training programs relating to excessive noise, its effects and its control.
9. — Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this chapter.
10. — Do any and all acts which may be necessary for the successful prosecution of the intent of this chapter and such other acts as may be specifically enumerated herein.
11. — Allocate police department resources, as shall be required to assist his duly authorized agent upon request by same, in the enforcement of this chapter.

~~§ 15-5. Reserved.~~

~~§ 15-65. Maximum Noise Levels.~~

~~A. *Noise sources other than motor vehicles.* Noise levels from stationary sources other than motor vehicles, and mobile sources while stationary unless exempt pursuant to §§ 15-5.F. or 15-15, shall not exceed those the noise limits presented set forth in Table I below for each of the zoning districts listed there indicated during the time of day indicated. The maximum permissible noise level shall be that associated with the zoning district classification of the receiving property that receives the noise, except for vehicles on public or private streets.~~

~~B. *Small power equipment: Motor vehicle noise sources.* Motor vehicle noise sources are subject to the noise limits set forth in Table II below.~~

- ~~1. — Any small power equipment which exceeds the permissible noise levels established in § 15-6.A may only be operated during the daytime.~~
- ~~2. — Noise measurements made to determine compliance with §§ 15-6.A and 15-6.B.1 shall be made not less than four (4) feet above the ground and not closer to the noise source than the boundary of the property on which the noise source is located.~~

~~C. *Mobile sources.* Mobile sources are noise levels generated by moving vehicles which conform to the standards set forth in Table II.~~

~~D. — *Measurement standards.*~~

- ~~1. — Any noise measurements made to determine compliance with § 15-5.C.A. shall be taken on a level surface at a distance of not less than fifty (50) feet from the noise from any built street at its curb or on the edge of the pavement or from any location on the property that receives the noise, unless the property that receives the noise is located in a multi-unit~~

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structure, in which case the measurements shall be made pursuant to subsection C.3. of this section.

2. Any noise measurement made to determine compliance with subsection B. of this section shall be taken at a distance of at least fifty (50) feet from the noise source.
3. Any noise measurement made to determine compliance with Table I in any structure utilized as a multi-unit structure shall be taken from a common area within or outside the structure, or from any other unit within the respective multi-unit structure when the owner or tenant of the unit from which the measurement is to be taken consents to measurement from his, her or its unit. Within such unit, the measurement shall be taken at a point at least four (4) feet from the wall, ceiling, floor, or window that is believed to be closest to the noise source, with doors to the receiving unit closed and windows in a position typical for the then-current season of the year.

E. Noise sensitive zones:

1. ~~Whenever the protection of the public health and welfare so require, the County Manager, after a duly advertised public hearing conducted by the county board, with the approval of the county board, may designate any geographical area of Arlington County as a noise sensitive zone. Such designation shall include a description of the subject area and the reasons for determination as a noise sensitive zone.~~
2. ~~In noise sensitive zones, noise levels originating from stationary sources shall not exceed those presented in Table I of this chapter.~~

F.D. Construction noise:

1. ~~Any construction activities which produce noise levels which exceeds the maximum permissible noise levels/limits established in Table I shall be permitted only during the daytime. This section shall not apply to emergency repairs to public utilities and infrastructure performed by the public utilities themselves or by local, state, or federal governments, or their contractors. For the purposes of this subsection, "public utility" shall have the meaning set forth in § 56-88 of the Code of Virginia, 1950, as amended.~~
2. ~~All feasible procedures and measures customarily used in the industry shall be undertaken by those responsible for operating or creating any source of sound, in order to minimize noise generated by construction activities. In no instance/event shall noise levels originating from construction sites exceed ninety (90) dBA. Measurements of construction-related noise are to be taken in accordance with the procedures established in § 15-65.BC.2.~~

~~G.E. Special events. Short-term or seasonal activities which have been reviewed and permitted through the Arlington County government's special-event review process/sponsored by a County agency or any organization, which have been reviewed and approved through the special-event review process may not exceed ninety (90) dBA for the duration of the event and associated clean-up. In the event of a discrepancy between 90 dBA and the applicable Daytime maximum noise set forth in Tables I and II, the 90-dBA limit shall control. Such events and their associated clean-up may not exceed the applicable noise set forth in Tables I and II if they extend beyond later than 9:00 p.m. on Sunday through Thursday, and later than 10:00 p.m. on a Fridays, Saturdays and legal holidays or day immediately preceding a legal holiday.~~

~~F. Exemptions. In addition to the exemptions procedure set forth in § 15-12, the following activities or sources of noise shall be exempt from the prohibitions set forth in this § 15-5, Tables I and II of this section, and § 15-6:~~

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1. Athletic contests and other activities officially sponsored, authorized, or otherwise sanctioned by the Arlington County Department of Parks and Recreation;
2. Church bells or carillons;
3. Religious or political gatherings and other activities protected by the First Amendment to the Constitution of the United States of America;
4. Activities for which the regulation of noise has been preempted by Virginia or federal law;
5. Audible signal devices which are employed as warning or alarm signals in case of fire, emergency, collision, theft, or burglary, or imminent danger, and the testing of such signals, and or noise that is emitted in conjunction with a duly-authorized parade; and
6. Electricity-generating systems used to provide emergency backup electric power.
7. ~~Athletic contests and other activities conducted at privately owned swim clubs that are held in compliance with an annual sound management plan submitted to and approved annually by the County Manager which plan shall include, but not be limited to, the following elements: 1) athletic contests and other activities are held not more than ten times in a calendar year; 2) athletic contests and other activities are held only between 6:00 a.m. and 10:00 p.m.; and 3) measures are in place to limit the extent to which noise sources used in the conduct of athletic contests and other activities are audible on properties at least 200 feet from the noise source.~~

OPTIONS FOR 15-5.F.7:

OPTION 1

7. Athletic contests conducted at privately owned swim clubs shall be exempt from the prohibitions set forth in Section 15-6 if held between 6:00 a.m. and 10:00 p.m.

OPTION 2

7. Athletic contests and other activities conducted at privately owned swim clubs shall be exempt from the prohibitions set forth in Section 15-5, Tables I and II of this section.

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**TABLE I
MAXIMUM PERMISSIBLE NOISE LEVELS FROM STATIONARY SOURCES ALL SOURCES
OTHER THAN MOTOR VEHICLES**

<u>Zoning District</u>	<u>Time of Day</u>	<u>Continuous Noise (dBA)</u>	<u>Impulsive Noise (dB)</u>	<u>'Continuous' Center Octave</u>	
				<u>Frequency (Hz)</u>	<u>Octave Band Center dBA component</u>
CM & M	All	70	120	31.5	85
				63	84
				125	79
				250	74
				500	68
				1,000	62
				2,000	57
				4,000	53
				8,000	50
C & C-O	All	65	100	31.5	80
				63	79
				125	74
				250	69
				500	63
				1,000	57
				2,000	52
				4,000	48
				8,000	45
R, R-A & S 3A	Daytime	60	95	31.5	75
				63	74
				125	69
				250	64
				500	58
				1,000	52
				2,000	47
				4,000	43
				8,000	40
FR, R-A & S 3A	Nighttime	55	90	31.5	70
				63	69
				125	64
				250	59
				500	53
				1,000	47
				2,000	42
				4,000	38
				8,000	35
Noise Sensitive Zones	All			8,000	35

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**TABLE I
MAXIMUM PERMISSIBLE NOISE LEVELS FROM STATIONARY SOURCES ALL SOURCES
OTHER THAN MOTOR VEHICLES**

Zoning District	Time of Day	Continuous Noise (dBA)	Impulsive Noise (dB)	'Continuous' Center Octave Octave Band Center	
				Frequency (Hz)	dBA component
CM, M-1 & M-2 P-S	All	70	120	31.5	85
				63	84
				125	79
				250	74
				500	68
				1,000	62
				2,000	57
				4,000	53
				8,000	50
C-1, C-2, C-3 C-1-O, C-1-R, C-TH C-O-1.0, C-O-1.5, C-O-2.5, C-O, C-O-A, C-R C-O-Roslyn, C-O-Crystal City RA-H, RA-H-3.2, RA4.8 MU-VS, & R-C	All	65	100	31.5	80
				63	79
				125	74
				250	69
				500	63
				1,000	57
				2,000	52
				4,000	48
				8,000	45
R-5, R-6, R-8, R-10, R-20, R2-7 R-15-30T, R-10T RA14-26, RA8-18 RA6-15, RA7-16 S-3A & S-D	Daytime	60	95	31.5	75
				63	74
				125	69
				250	64
				500	58
				2,000	47
				4,000	43
				8,000	40
				R-5, R-6, R-8 R-10, R-20, R2-7 R-15-30T, R-10T RA14-26, RA8-18 RA6-15, RA7-16 S-3A & S-D	Nighttime
63	69				
125	64				
250	59				
500	53				
2,000	42				
4,000	38				
8,000	35				

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TABLE II
MAXIMUM PERMISSIBLE NOISE LEVELS FROM MOBILE SOURCES MOTOR VEHICLES

<u>Class of Source Vehicle</u>	<u>Up to 35 miles per hour MPH</u>	<u>Above 35 MPH miles per hour & above</u>
Motorcycle	80 dBA	84 dBA
<u>Mobile sources with gross weight less than Total GVW < 10,000 lbs.</u>	70 dBA	79 dBA
<u>Mobile sources with gross weight more than Total GVW ≥ 10,000 lbs.</u>	86 dBA	90 dBA

[1-1-75; 8-14-76; 8-25-81; Ord. No. 04-24, 9-18-04; Ord. No. 13-___, XX-XX-13]

§ 15-76. Prohibited Acts.

A. It shall be unlawful for any person, group of persons, or entity to make or continue, or cause to be made or continued, any noise disturbance, as that term is defined above.

~~B. In addition, the following prohibited acts set forth in this § 15-6 are prohibited regardless of the zoning district classification of the property from which noise is emitted or the decibel level of that noise. For purposes of the measurements set forth below, if the source of the sound is not visible, then the measurement shall be taken from the exterior wall of the building, structure or other enclosure in which the source of the sound is located.~~

C. It shall be unlawful for any person to sound a vehicular horn or other audible signal permitted pursuant to § 15-5.F.5.

~~D. It shall be unlawful for any person to sell anything by outcry during the nighttime. The selling by outcry of merchandise, food and beverages at licensed entertainment events is excluded from the prohibition of this subsection.~~

~~E. It shall be unlawful for any person to use any machine or device during the nighttime for the production or reproduction of sound which is cast upon public streets or lands for the purpose of commercial advertising or of attracting the attention of the public to any building, structure or activity during the nighttime. If such machine or device is used only intermittently for announcing or paging an individual, or signals the ringing of a telephone, or the commencement or conclusion of work or school, or is permitted by § 15-5.F., it shall be exempt from the prohibition of this subsection.~~

~~F. It shall be unlawful for any person to use, operate, or play, or to permit the use, operation or playing of, any radio, television, phonograph, record, compact disc or tape player, drum, musical instrument, loudspeaker, sound amplifier or similar device or machine which produces, reproduces or amplifies sound in such a manner as to create a noise disturbance be heard within any nearby dwelling unit, house or apartment of another person at least 20 feet from the source of the sound, or at least 50 feet from the source of the sound and either across any real property boundary or at the curb or on the edge of the pavement of any built street.~~

~~E. It shall be unlawful for any person or group of persons to unreasonably make, continue or cause to be made or continued any noise disturbance.~~

G. It shall be unlawful for any person in a group of four or more persons (alternative option: person) to engage, in any "R" zoning district during the nighttime, in yelling, wailing, shouting, or screaming such that the yelling, wailing, shouting or screaming is heard in any "R" or "RA" District including "RA14-26", "RA8-

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18", "RA6-15" and "RA7-16" within any nearby dwelling unit, house or apartment of another person at least 20 feet from the source of the sound, or at least 50 feet from the source of the sound and either across any real property boundary or at the curb or on the edge of the pavement of any built street.

FH. It shall be unlawful for any person to collect refuse with a refuse vehicle during the nighttime, subject, however, to the exemption set forth in § 15-15.

GI. It shall be unlawful for any operator to run the propulsion engine of a commercial motor vehicle for more than ~~thirteen (13)~~ ten (10) minutes when the vehicle is parked, left unattended, or is stopped for other than traffic or maintenance reasons, except when the propulsion engine provides auxiliary service other than heating, or air conditioning.

J. It shall be unlawful for any person to perform lawn or garden maintenance using motorized equipment during the nighttime.

K. It shall be unlawful to operate a motorized leaf-blowing device in any "R" zoning district during the nighttime.

HL. It shall be unlawful for any person who owns, possesses or harbors any animal or bird to permit that animal or bird to create a ~~frequent or continued noise disturbance~~ that it is audible at least once per minute for ten (10) consecutive minutes within any dwelling unit, house or apartment of another person, at any street edge, or across a real property boundary or within a nearby dwelling unit.

M. It shall be unlawful for the holder of any exemption issued pursuant to § 15-12 to exceed or otherwise violate the terms of that exemption.

OPTIONS FOR 15-6 N

OPTION A

N. It shall be unlawful for any person to engage in yelling, wailing, shouting, or screaming in any Mixed Use District ~~before 9:00 a.m. or after 11:00 p.m. on Fridays and Saturdays and before 9:00 a.m. and after 10:00 p.m. on Sundays through Thursdays, and between 12:00 noon and 6:00 p.m. on Sundays, such that the yelling, wailing, shouting, or screaming can be heard within any dwelling unit, lodging unit, house or apartment of another person at least (option 1-50 feet) (option 2-100 feet) (option 3-200 feet) from the source of the sound, unless otherwise provided for by the Special Events Policy.~~

OPTION B

N. It shall be unlawful for any person to engage in yelling, wailing, shouting, or screaming in any Mixed Use District ~~between the hours of Midnight and 9:00 a.m. such that the yelling, wailing, shouting, or screaming can be heard within any dwelling unit, lodging unit, house or apartment of another person at least (option 1-50 feet) (option 2-100 feet) (option 3-200 feet) from the source of the sound, unless otherwise provided for by the Special Events Policy.~~

OPTIONS FOR 15-6 O

OPTION A

O. It shall be unlawful for the owner, manager, assistant manager, and other person in charge of a retail use located within any Mixed Use District, which includes an outdoor café, exterior rooftop seating area, or other use or activity in the exterior of the retail use to permit any person, while in the outdoor café, exterior rooftop seating area, or other exterior location, to engage in yelling, wailing, shouting, or screaming ~~before 9:00 a.m. or~~

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after 11:00 p.m. on Fridays and Saturdays and before 9:00 a.m. and after 10:00 p.m. on Sundays through Thursdays, and between 12:00 noon and 6:00 p.m. on Sundays, such that the yelling, wailing, shouting, or screaming can be heard within any nearby dwelling unit, lodging unit, house or apartment of another person at least (option 1-50 feet) (option 2-100 feet) (option 3-200 feet) from the source of the sound, unless otherwise provided for by the Special Events Policy.

OPTION B

O. It shall be unlawful for the owner, manager, assistant manager, and other person in charge of a retail use located within any Mixed Use District, which includes an outdoor café, exterior rooftop seating area, or other use or activity in the exterior of the retail use to permit any person, while in the outdoor café, exterior rooftop seating area, or other exterior location, to engage in yelling, wailing, shouting, or screaming between the hours of Midnight and 6:00 a.m. such that the yelling, wailing, shouting, or screaming can be heard within any nearby dwelling unit, lodging unit, house or apartment of another person at least (option 1-50 feet) (option 2-100 feet) (option 3-200 feet) from the source of the sound, unless otherwise provided for by the Special Events Policy.

OPTIONS FOR 15-6 P

OPTION A

P. It shall be unlawful for any person to engage in yelling, wailing, shouting, or screaming in the County between the hours of 11:00 p.m. and 6:00 a.m., such that the yelling, wailing, shouting, or screaming can be heard within any nearby dwelling unit, lodging unit, house or apartment of another person, unless otherwise provided for by the Special Events Policy.

OPTION B

P. It shall be unlawful for any person to engage in yelling, wailing, shouting, or screaming in the County between the hours of 2:00 a.m. and 6:00 a.m., such that the yelling, wailing, shouting, or screaming can be heard within any nearby dwelling unit, lodging unit, house or apartment of another person, unless otherwise provided for by the Special Events Policy.

§ 15-87. Noise-Suppression Devices.

A. No person shall cause, suffer, allow or permit the removal, disconnection or disabling of any noise-suppression system or device which has been installed on any noise source:

1. ~~In~~ accordance with federal-~~or~~, state or local laws or regulations-, or
2. ~~As~~ a requirement for obtaining a permit to construct, modify-~~or~~, install or operate such noise source.

B. No person shall defeat the design purpose of any noise-suppression system or device by installing therein or thereon any part or component which does not meet the minimum design specifications for that system or device.

C. No noise source shall be operated with its noise-suppression system or device removed or otherwise rendered inoperable.

§ 15-98. Inspections.

A. The County Manager is hereby authorized and directed to make or cause to be made inspections (1) in response to complaints ~~regarding that an alleged violations of the provisions of this chapter, so long as the County Manager or of applicable rules or regulations pursuant thereto which may exist when he has valid reason to~~

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believe that a violation of this chapter has been or is being committed, or (2) as part of a systematic noise disturbance survey program.

B. The County Manager ~~shall have authority~~ may, with the consent of the respective owner, occupant, operator or agent, to enter and inspect all premises subject to the provisions of this chapter for the purpose of determining whether there is compliance with ~~its~~this chapter's requirements.

C. If any owner, occupant, operator or agent fails to allow or refuses free access and entry to the premises, or any part thereof, where a noise source is located, ~~or any part thereof~~, and with respect to which an inspection authorized by this chapter is sought to be made, the County Manager may, upon a showing that probable cause exists for the inspection, petition and obtain process or an order or warrant from a magistrate or court of competent jurisdiction authorizing such an inspection.

D. ~~All evidence which may be discovered or obtained in the course of an inspection made pursuant to this section shall not be disclosed except as may be necessary in the judgment of the County Manager or the Attorney for the Commonwealth for the proper and effective administration and enforcement of the provisions of this chapter and regulations issued pursuant thereto.~~

§ 15-109. EnforcementCriminal Penalties.

A. Any violation of this chapter may be charged as a misdemeanor, and any violator may, upon conviction, be punished by a fine of not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500), or by imprisonment in the Arlington County jail for a period of not more than thirty (30) days, or both, for each offense. Each calendar day of violation shall constitute a separate offense.

B. ~~Whenever the County Manager or his agent determines that any noise source fails to meet the requirements set forth in this chapter or in applicable regulations issued pursuant thereto, he may obtain a warrant or summons for the prosecution of such violation. In addition, if the agent investigating a potential violation of this chapter is a duly-qualified law enforcement officer of Arlington County and he or she has probable cause to do so, he or she may issue a summons to, or arrest without a warrant, any person who, in the presence of the officer, violates any provision of this chapter.~~

C. The imposition of a criminal penalty for any violation of this chapter shall not excuse the violation or permit it to continue.

D. Nothing in this section shall be construed to abridge, limit or otherwise impair the right of any person or entity to claim, in a separate, private action, damages or other relief on account of injuries to persons or property, and to maintain any action or other appropriate proceeding therefor.

Furthermore, ~~the County Manager or his agent may issue a notice of violation setting forth the alleged failures and advising the owner, occupant, operator or agent that such failures must be corrected. Such notice shall:~~

1. ~~Be in writing;~~
2. ~~Set forth the alleged violations of this chapter or of applicable regulations issued pursuant thereto;~~
3. ~~Describe the premises where the violations are alleged to exist and/or other identifications of the noise source;~~
4. ~~Set forth a reasonable time within which any violation alleged is required to be corrected;~~
5. ~~Be served upon the owner, occupant or operator of the noise source, or upon the agent of any of the foregoing, by:~~
 - a. ~~Personally delivering the same to such person; or~~

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b. ~~Mailing the same to such person by certified mail, return receipt requested, addressed to the last known place of residence of such person; or~~

c. ~~Posting the same in or about the premises described in the notice if service under § 15-10.A.5a. or b.~~

~~B. At the end of the period of time allowed for correction of any violation alleged, the County Manager shall reinspect the noise source described in the notice.~~

~~C. Reserved.~~

~~D. Reserved.~~

~~E. Reserved.~~

~~F. Referral to Commonwealth's Attorney, injunction, etc. If the County Manager determines that the violation has not been corrected, the County Manager may:~~

~~1. Refer the matter to the Commonwealth's Attorney for prosecution pursuant to § 15-13.A; or~~

~~2. Apply to a court of competent jurisdiction for any and all injunctive relief as the court may deem proper to enforce the provisions of this chapter; or~~

~~3. Extend the time for compliance for a reasonable time.~~

§ 15-10. Civil Penalties; Appeals Therefrom.

A. Any person who commits, permits, assists in or attempts any violation of this chapter, whether by act or omission, shall be liable for a civil violation and may, upon the issuance of a citation by the County Manager, be punished by a civil fine of not more than two hundred fifty dollars (\$250.00) for the first violation, and not more than five hundred dollars (\$500.00) for a second or other subsequent violation. Each calendar day of violation shall constitute a separate offense.

B. The issuance of a citation for a civil violation of this chapter may occur only after a notice of violation has been issued that sets forth the alleged violation or violations and advises the owner, occupant, operator or agent that such violation or violations must be corrected. Such notice of violation shall:

1. be in writing;

2. describe the alleged violation or violations;

3. name, by street address or RPC number, the premises where the violation or violations are alleged to exist;

4. state a deadline by which the violation or violations must be corrected; and

5. be delivered to the owner, occupant, operator or party responsible for the noise, or upon the agent of any of the foregoing, by:

a. hand delivery to any such person or entity;

b. mailing to such person or entity by U.S. certified mail; or

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c. posting at the premises named in the notice.

C. The imposition of a civil penalty for any violation of this chapter shall not excuse the violation or permit it to continue.

D. Nothing in this chapter shall be construed to abridge, limit or otherwise impair the right of any person or entity to claim, in a separate, private action, damages or other relief on account of injuries to persons or property, and to maintain any action or other appropriate proceeding therefor.

E. If a person who was issued a civil citation pursuant to this section does not abate the violation and either admit liability or choose not to contest the citation, then a summons shall be issued to the person by the County Manager and the civil violation shall be tried in the General District Court of Arlington County. Any party desiring to appeal that Court's decision on a civil violation of this section may appeal as provided at law for civil actions.

F. During the pendency of any appeal, the civil citation issued by the County Manager shall remain in full force and effect.

§ 15-11. Emergency Procedures.

A. Whenever, in the judgment of the County Manager, an emergency exists which requires immediate action to protect the public health, safety or welfare, ~~the County Manager may issue an order may be issued, without notice, conference or hearing, directing the owner, occupant, operator-~~or~~, agent and/or responsible party of and/or for the noise source or premises where the noise source is located~~ to take such action as is appropriate to correct or abate the emergency. If circumstances warrant, the County Manager may act to correct or abate the emergency.

B. The owner, occupant, operator-~~or~~, agent and/or responsible party of and/or for the noise source and/or the premises where the noise source is located shall be granted a conference on the matter with the County Manager upon his, ~~her or its~~ request, as soon as practicable, but such conference shall in no case stay the ~~correction or abatement or correction~~ of such emergency.

C. Any person aggrieved by an order of the County Manager, ~~issued~~ pursuant to any provision of this chapter, may appeal that order to a court of competent jurisdiction.

§ 15-12. Exemptions Issued by the County Manager.

A. Any person responsible for any noise source may apply to the County Manager for an exemption or partial exemption from the provisions of this chapter. The application shall be accompanied by such information and data as ~~the County Manager~~ may require. The County Manager may grant such exemption or partial exemption if he or ~~she~~ finds that:

1. The potential danger to the community is outweighed by the benefit to the public interest during the period of exemption, ~~or~~
2. Compliance with the provisions of this chapter from which exemption is sought would produce serious hardship without equal or greater benefits to the public.

B. No exemption or partial exemption issued pursuant to this section shall be granted for a period ~~to exceed~~ longer than one (1) year; but any such exemption or partial exemption may be renewed for ~~like periods~~ a period of up to one (1) additional year at a time if, after being duly considered at a hearing held by the County Manager, ~~he~~ the County Manager finds that renewal is justified ~~under~~ pursuant to the factors set forth in § 15-12.A. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty (60) days prior to the expiration of the exemption or partial exemption. Any renewal granted pursuant to this section shall be on the same grounds and subject to the same limitations and requirements as provided in § 15-12.A.

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C. An exemption, partial exemption or renewal thereof shall not be a right of the applicant or holder thereof but shall be at the discretion of the County Manager. The recipient of any exemption or partial exemption shall post a copy of the exemption or partial exemption to be posted with the source of the noise.

D. ~~Audible signal devices which are employed as warning or alarm signals in case of fire, collision or imminent danger are specifically exempt from the provisions of this chapter.~~

E. ~~Nothing in this section, and no exemption, partial exemption or renewal granted pursuant hereto, shall be construed to prevent or limit the application of the emergency provision and procedures of § 15-11A, of this chapter to any person or his, her or its property.~~

§ 15-13. Penalties.

A. ~~All violations of this chapter shall be misdemeanors and shall, upon conviction, be punished by a fine of not less than twenty five dollars (\$25.00) nor more than two thousand five hundred dollars (\$2,500.00), or by imprisonment in the county jail for a period of not more than thirty (30) days, or both, for each offense; and each day of violation shall constitute a separate offense.~~

B. ~~The imposition of one (1) penalty for any violation shall not excuse the violation or permit it to continue.~~

C. ~~Nothing in this chapter shall be construed to abridge, limit or otherwise impair the right of any person to damages or other relief on account of injuries to persons or property and to maintain any action or other appropriate proceeding therefor.~~

§ 15-1413. Severability.

Should any section, subsection, sentence, clause or phrase of this chapter be declared invalid or unconstitutional by a court of competent jurisdiction, such decision/declaration shall not affect the validity of the chapter in its entirety or of any part thereof other than that separat declared to be invalid.

§ 15-1514. Conflict of Ordinance.

In any case where a provision of this chapter is found to be in conflict with any other provision of the Arlington County Code, the provision which establishes the more stringent standard for the promotion and protection of the health and safety of the people/public shall prevail. In any case where a provision of this chapter is found to be in conflict with any other provision of the Arlington County Code which established a less stringent standard for the promotion and protection of the health and safety of the people/public, the provisions of this chapter shall be deemed to prevail; and such other provisions are hereby declared to be repealed to the extent that they may be found in conflict with this chapter.

§ 15-1615. Exemption for County Activities.

The provisions of this chapter shall not apply to operations at County facilities as ~~designated by the County Manager and/or~~ engaged in by County employees or County contractors, or to County residential refuse and leaf collection programs if such programs are operated by the County or by an entity under contract towith the County.

Attachment 2

Chapter 8
Draft Version 1.2
March 2, 2018

Draft of October 24, 2017 - Version 1

Draft dated January 24, 2018 – Version 1.1

Draft dated March 2, 2018 – Version 1.2

Chapter 8

Garbage and Refuse, Recyclables, and Yard Waste

Art. I. In General, §§ 8-1 – 8-14

Art. II Collection by town, §§ 8-15 – 8-34

Art. III Collection by others, §§ 8-35 -

ARTICLE I. - IN GENERAL

Sec. 8-1. – Definitions

For the purposes of this chapter, the following words and terms shall have the meanings ascribed to them by this section.

~~Chief of police~~—The chief of police of the Town of Berryville, Virginia, or authorized designee.

Collection – Removal of **solid waste, garbage and refuse** and/or recyclable materials from its place of origin or storage to a collection vehicle.

Collection vehicle – Any vehicle used to collect or transport **solid waste, garbage and refuse** or recyclable materials.

Collector – Any person engaged in the business of collection and transportation of **solid waste, garbage and refuse** or recyclable materials.

Commercial /business waste - Solid waste, **garbage and refuse** or recyclable materials emanating from establishments engaged in business **operations other than manufacturing**. This category includes but is not limited to **solid waste, garbage and refuse** or recyclable materials emanating from such establishments as stores, markets, offices, **and** restaurants, ~~and contractor establishments~~.

Construction, clearing and/or demolition debris- The waste building material, packaging, and rubble resulting from construction, land clearing, remodeling, repair, and demolition operations on pavements, houses, vacant land, commercial buildings, and other structures.

Dumpster - Any container having a capacity in excess of one hundred (100) gallons designed to contain **solid waste, refuse, and** garbage, or recyclable materials and which is emptied by mechanical means.

Dumpster enclosure – A ~~gated~~ solid opaque wood fence or masonry wall **enclosure** six (6) feet in height in which a dumpster is placed.

Garbage- Putrescible animal or vegetable waste resulting from the handling, preparation, cooking, serving, or consumption of food.

Hazardous waste – Solid waste which because of its inherent nature and/or qualities requires special handling during disposal to avoid creating environmental damage or hazards to public health or safety or landfill operations. Hazardous waste includes but it not limited to such items as petroleum waste, paints, plastics, explosives, acids, caustics, chemicals, poisons, drugs, radioactive materials, asbestos fibers, imported wool fibers, pathogenic wastes from hospitals, sanitariums, nursing homes, clinics and veterinary hospitals, waste from slaughterhouses, poultry processing plants and the like. (Residential solid waste normally contains very small amounts of hazardous waste but because they are found in such small amounts present no special problems for landfill operations. Therefore, residential waste is not considered to be hazardous waste within the meaning of hazardous waste used in the chapter).

Household waste – See “residential/household waste”.

Industrial waste- All solid waste, **garbage and refuse** or recyclable materials emanating from manufacturing, assembly of material, recycling, and other industrial **activities**.

Mixed paper- Paper accepted for recycling **by** the Town.

Occupant – The person who resides on premises as owner or tenant.

Public works director – ~~The public works director of the Town of Berryville, Virginia, or authorized designee.~~

Qualified commercial/business occupancy – A licensed business located within the special collection zone and meeting the requirements for **garbage and refuse and/or recyclable materials** collection **by the town** ~~within that zone.~~

Recyclable Materials – Raw or processed material that can be recovered from the waste stream for reuse.

Refuse – ~~All solid waste of the community~~ Discarded items including but not limited to paper, cartons, boxes, debris, cans, glass, food packaging, clothing and the like. **Refuse does not include hazardous or unacceptable waste.**

Residential/household waste - ~~Solid waste~~ **Garbage and refuse** or recyclable materials emanating from single-family detached homes or condominiums, attached residential units, and apartments.

Sanitary landfill – A landsite on which engineering principles are utilized to bury deposits of solid waste without creating nuisances or hazards to public health or safety.

Solid Waste – As defined in 9 VAC 20-80-140 of the Solid Waste Management Regulations, Department of Environmental Quality, Commonwealth of Virginia.

Toter – Town or contractor furnished wheeled waste containers for each designated household or qualified commercial/business occupancy.

Town manager – The town manager of the Town of Berryville, Virginia, or authorized designee.

Town planner – The assistant town manager for community development/operations of the Town of Berryville, Virginia, or authorized designee.

Transportation – The transporting of **solid waste, garbage and refuse** or recyclable materials from the place of collection to a disposal facility.

Unacceptable waste – Items enumerated in Sec. 8-22 of this chapter.

Vacant Property – A lot or parcel of real property either not improved by any structure or having a structure or structures neither occupied as a residence or devoted to any other use involving the presence of employees or other persons on business days.

Waste – Useless, unwanted, or discarded materials.

Waste generator – The person **or entity** who actually produces the **residential**, commercial, household, industrial, or institutional/governmental solid waste.

Yard waste – Leaves, twigs, **shrubbery, and** branches less than six (6) inches in diameter, ~~and shrubbery~~.

Sec. 8-2. - Violations of chapter.

Unless otherwise specifically provided, a violation of any provision of this chapter shall constitute a Class 4 misdemeanor.

Cross reference— Penalty for Class 4 misdemeanor, § 1-11.

Sec. 8-3. - Unlawful accumulations.

- (a) It shall be unlawful for any owner or occupant of any premises within the town to allow **solid waste, refuse, garbage, refuse**, recyclable materials, ashes, ~~refuse~~, trash, litter or other substances which might endanger the health of other residents of the town to accumulate on such premises.
- (b) The owner of any property in the town shall remove accumulations referred to in subsection (a) above from such property at intervals as may be prescribed by the town manager or his designee. Reasonable notice of the date fixed by the town manager for such removal shall be given by mail or delivery of a written notice to the owner of such property.
- (c) Upon the failure of the owner of property to remove **solid waste, refuse, garbage, refuse, recyclable materials, ashes**, trash, litter and other substances which might endanger the health of other residents of the town, as provided in the notice given pursuant to subsection (b) above, the town manager may have such refuse, garbage, trash, litter and other substances removed and bill the owner for the work. Upon the owner's failure to pay such bill by tax billing time, such bill shall be placed upon the tax bill of the owner so delinquent and collected as taxes are collected.

(Code 1971, §§ 8-1, 8-3)

Cross reference— Open storage of inoperative vehicles in certain zoning districts, § 13-30; abandoned or discarded refrigerators or other airtight containers, § 13-31; cutting and removal of weeds and other foreign growth on vacant property, § 13-32; maintenance of property abutting Town Run, § 13-33.

State Law reference— Authority for above section, Code of Virginia, § 15.2-901.

Sec. 8-4. - Disposal in town of refuse, garbage, trash etc., accumulated outside town.

It shall be unlawful and a Class ~~2~~ 3 misdemeanor for any person to place, dump or otherwise dispose of refuse, garbage, trash, litter, recyclable materials or any other unsightly matter that has been accumulated or collected outside the corporate limits of the town at any place within the town.

(Ord. of 2-13-73; Ord. of 2-13-79, § 8-15)

Cross reference— Penalty for Class 2 misdemeanor, § 1-11.

State Law reference – Authority for above section, Code of Virginia, § 15.2-928

Sec. 8-5. - Upsetting, tampering and misusing litter receptacles maintained by the town.

No person shall cause the removal, upsetting, mutilation or defacing of, or tamper with any litter receptacle maintained by the town, cause the contents thereof to be spilled or to be strewn in or upon any public place or private premises, or use such receptacle for disposal of commercial/business or household refuse.

(Ord. of 2-13-01)

State Law reference— Authority for above section, Code of Virginia, Section 15.2-928.

Sec. 8-6. – Dumpsters, placement, enclosure, prohibited times for emptying.

(a) No person shall locate any dumpster in the town without written authorization from the town.

(b) Placement or location of dumpsters for less than 180 days:

- a. No person shall place any dumpster in the public right-of-way without written authorization from the town planner, who may as a condition of approval require safety measures ~~he deemed~~ necessary, proof of insurance, and maximum time dumpster may remain on said right-of-way. **No dumpster may be located in the public right-of-way within the Special Flood Hazard Area as identified on the Flood Insurance Rate Map.**
- b. No person shall place any dumpster on private property without written authorization from the town planner, who may as a condition of approval require safety measures ~~he deemed~~ necessary and a maximum time the dumpster may remain on said property. **No dumpster may be located within the Special Flood Hazard Area as identified on the Flood Insurance Rate Map unless the town planner determines that necessary steps will be**

taken to secure the dumpster in a manner that will prevent it from becoming a hazard during a flood event.

- (c) Placement or location of dumpsters for more than 180 days:
- a. No person shall place any dumpster in the public right-of-way for a period exceeding 180 days.
 - b. No person shall place a dumpster on private property **not within the public right-of-way**, without written authorization from the town planner, who **may not permit the siting of a dumpster** in such a way that the collection of solid waste or recyclable materials will impede pedestrian or vehicular traffic **on public rights-of-way** or otherwise create a safety hazard.
 - c. All dumpsters visible from a public right-of-way shall be completely enclosed within a solid opaque wood fence or masonry wall at least six (6) feet high **dumpster enclosure**.
 - d. **No dumpster may be located within the Floodway portion of the Special Flood Hazard Area as identified on the Flood Insurance Rate Map unless the town planner determines that necessary steps will be taken to secure the dumpster in a manner that will prevent it from becoming a hazard during a flood event.**
 - e. The town planner shall review the placement of dumpsters and **siting and construction of** required dumpster enclosures.
- (d) All dumpsters, and the immediate area around them, shall be kept clean and sanitary at all times. Solid waste shall be completely contained within such container, all doors of the unit shall be kept closed, and all drain plugs shall be tightly secured.
- (e) It shall be unlawful for any **individual**, business or corporation to empty a dumpster in town between the hours of 10:00 p.m. and 7:00 a.m. except within industrially zoned areas of the town.

State Law reference – Authority for above section, Code of Virginia, § 15.2-930

(Ord. of 1-12-99)

Sec. 8-7. – Requirements for collection vehicles

- (a) All collection vehicles shall be kept and maintained in a clean and sanitary condition, and shall be so constructed, maintained and operated as to prevent spillage of the type of **solid waste, garbage and refuse, and recyclables** to be transported therein. All collection vehicles used in the collection of garbage shall be constructed and maintained with watertight bodies and with covers of metallic or other rigid, impervious material, or, in the alternative, the entire bodies thereof shall be enclosed, with only loading hoppers exposed.
- (b) Special vehicles used in new or experimental methods of refuse collection may be permitted by the town manager, when such authorization is in writing.

Sec. 8-8. – Picking through contents totes or dumpsters.

It shall be unlawful for any person to pick through, handle or interfere with the contents of any toter or dumpster under the provisions of this article. Collectors, ~~E~~employees of the town or other governmental agencies involved in duly authorized investigations, as well as the occupant or waste generator utilizing the toter or dumpster, shall be exempt from this prohibition.

Secs. 8-9—8-14. - Reserved.

ARTICLE II. - COLLECTION BY TOWN

FOOTNOTE(S):

--- (2) ---

Cross reference— Department of public works responsible for refuse collection, § 2-53.

State Law reference— Local recycling and waste disposal; powers; penalties, Code of Virginia, § 15.2-928. Authority for town to regulate garbage and refuse disposal, Code of Virginia, § 15.2-927. Regulation of garbage and refuse pickup and disposal services; contracting for such services, Code of Virginia, § 15.2-930

Sec. 8-15 – Collection of garbage and **refuse and** recyclable materials

The town will furnish garbage and **refuse and** recyclable materials collection for all single-family detached, duplexes, and townhouses, **commercial/business occupancies, and institutional occupancies** in the town in accordance with provisions of this chapter and **policies and** procedures established by the council or **and** town manager.

Sect. 8-16 - Special service area established

The council may by ordinance establish a special service area, in which the town will furnish **enhanced** garbage and **refuse and/ or** recyclables collection to qualified commercial/business **and institutional** occupancies, **as well as collection service for** and multi-family residential developments. The ordinance establishing the special service area will delineate boundaries of the area and establish requirements for provision of collection services. Upon establishment of a special service area the Town will furnish garbage and **refuse and/or** recyclables collection to qualified occupancies within the town's special service area town in accordance with provisions of this chapter and **policies and** procedures established by the council and town manager.

Sec. 8-17. - Collection times and routes – garbage and **refuse and** recyclable materials.

The town manager shall establish and specify the days and hours each week when garbage and **refuse and** recyclable materials will be collected and the routes to be served at the times so specified.

(Ord. of 2-13-79, § 8-14)

State Law reference – Authority for above section, Code of Virginia, § 15.2-928.

Sec. 8-18. - Containers generally – garbage **and refuse**.

- (a) All garbage **and refuse** to be collected by the town shall be placed in tied **securely closed** disposable plastic bags and placed in approved containers. All such non-disposable containers, whether totes or dumpsters, shall have an integrated lid to prevent the intrusion of water and disturbance by animals and entrance by insects.
- (b) Garbage **and refuse** collected by the town shall be placed in approved containers.
- (c) Garbage **and refuse** shall be placed inside the approved container in such a manner that allows for the integrated lid to completely close.
- (d) No person shall place any waste **garbage and refuse** in approved container without first draining any liquid from such waste.
- (e) The occupant of the premises supplied with the toter(s) to maintain it in a clean and sanitary condition.
- (f) Containers issued by the town or its contractor are the property of issuing entity. Toters shall not be removed from the assigned toter address. Damaged toters reported to the town will be repaired or replaced.
- (d)** The cost to replace or repair toters that are intentionally damaged or removed will be charged to the owners or tenants at the assigned address. **In such instances,** ~~the~~ the owners or tenants will be assessed a replacement fee to be determined by the town manager, not to exceed 120 percent of the actual replacement cost.

State Law reference – Authority for above section, Code of Virginia, § 15.2-928.

(Ord. of 2-13-79, §§ 8-5, 8-7; Ord. of 11-13-90; Ord. of 10-13-98)

Sec. 8-19. – Containers generally – For recyclable materials.

- (a) All recyclable materials, **with the exception of cardboard,** to be collected by the town shall be placed in a non-disposable container provided by the town or its contractor. All liquids shall be drained from the item prior to placement in the container.
- (b) All items placed in the non-disposable container shall be done in a manner to prevent escape as a result of wind and weather conditions.

State Law reference – Authority for above section, Code of Virginia, § 15.2-928.

Sec. 8-20. - Preparation of cardboard for collection with recyclable materials.

Cardboard containers to be collected by the town or its contractor for recycling, need not be placed in containers but will be collected if flattened and securely tied in compact bundles that can be handled by one collector. No such bundle shall exceed four (4) feet in length and fifty (50) pounds in weight.

(Ord. of 2-13-79, § 8-9; Ord. of 10-13-98)

State Law reference – Authority for above section, Code of Virginia, § 15.2-928.

Sec. 8-21. - Placement of containers on collection day; collectors not to enter building.

- (a) All garbage toters and recycling containers containing materials for collection by the town shall be set out not later than 7:00 a.m. on collection days. No toters or containers may be set out for collection more than twenty-four (24) hours before the established collection time and empty toters and containers shall be removed on the same day of collection.
- (b) Toters set out for collection shall be placed near the edge of pavement, edge of road, or in a location approved by the town manager to enable the automatic arm of the collection vehicle to pick up the toter. No collector shall enter any building for removal of garbage and refuse.
- (c) Recycling containers and cardboard bundles set out for collection shall be placed near the edge of pavement, edge of road, or in a location approved by the town manager, so they can be reached easily by the collectors. No collector shall enter any building for removal of recyclable materials.

(Ord. of 2-13-79, §§ 8-16, 8-17; Ord. of 11-13-90; Ord. of 10-13-98)

State Law reference – Authority for above section, Code of Virginia, § 15.2-928.

Sec. 8-22. - Certain solid waste and refuse and garbage not to be collected.

- (a) Rejected building materials, tin, contractors' waste, industrial waste, automobiles or parts thereof, tires, and hazardous materials shall not be collected by the town. In the event such material is found at collection points, the persons placing the same for collection shall be required to remove the same immediately and notify the town manager. Radioactive materials, drugs, poison and like substances shall only be removed under the supervision of persons qualified in the handling of such materials.
- (b) No livestock animal or fowl excrement shall be collected by the town and no such excrement shall be placed in any container set out for collection by the town.
- (c) Ashes containing live coals shall not be collected by the town.

(Ord. of 2-13-79, §§ 8-5, 8-6, 8-10)

State Law reference – Authority for above section, Code of Virginia, § 15.2-928.

Sec. 8-23. – Yard waste collection general.

The Town will furnish collection of yard waste from parcels ~~from single family detached, duplexes, and townhouses~~ in the town that is generated by owners or occupants in accordance with provisions of this chapter and policies and procedures established by the council or town manager.

Sec. 8-24. – Collection times and route – yard waste.

The town manager shall establish and specify the days and hours when yard waste will be collected and the routes to be served at the times so specified.

Sec. 8-25. - Preparation of yard waste for collection.

- (a) Small tree branches, **shrubby**, and brush to be collected by the town shall be securely tied in compact bundles that can be handled by one collector. No such bundle shall exceed four (4) feet in length, twelve (12) inches in diameter and fifty (50) pounds in weight. Large branches to be collected shall not exceed four (4) feet in length, six (6) inches in diameter and fifty (50) pounds in weight. Bundles and large branches to be collected by the town shall be placed near the edge of pavement, or edge of road, or in a location approved by the town manger so they can be easily reached by the collectors.
- (b) Leaves to be collected by the town during the annual leaf collection period shall be piled adjacent to street curbs, but shall not cover any portion of a sidewalk. Leaf piles shall contain no rocks or other items that might damage the leaf collection equipment. During the annual leaf collection period leaves will be collected by the town in accordance with standards and a schedule approved by the town manager and posted on the town website.
- (c) Loose yard waste to be collected by the town shall be placed in ~~large~~ paper bags and placed near the edge of pavement, edge of road, or in a location approved by the town manager, so they can be reached easily by the collectors. No such bag may exceed fifty (50) pounds in weight. All paper bags containing loose yard waste for collection by the town shall be set out not later than 7:00 a.m. on collection days. No such bags may be set out for collection more than twenty-four (24) hours before the established collection time.
- (d) No single collection **for any parcel** shall exceed a total of 10 bundles, branches, or bags.
- (e) The town manager may suspend or modify yard waste preparation requirements and collection limits if he determines such a suspension or modification necessary; provided that, the determination is made in writing, is reported to the council within fifteen (15) days of the determination, and no single such determination suspends or modifies requirements for more than ninety (90) days.

(Ord. of 10-13-98)

State Law reference – Authority for above section, Code of Virginia, § 15.2-928.

Sec. 8-26. – Certain yard waste not to be collected

Rocks and hardscape materials, large stumps, any stumps containing rocks and dirt, dirt, sod, plastic bags, **grass clippings**, food waste shall not be collected by the Town.

Secs. 8-27—8-35. - Reserved.

ARTICLE III. - COLLECTION BY OTHERS

Sec. 8-36. – Collection provided by others

- (a) Owners or tenants of properties that do not receive collection services provided by the town shall be responsible for securing the services of a private waste hauler. **Solid waste and** ~~G~~garbage and

refuse must be removed at intervals necessary to prevent a condition that might endanger the health of residents of the town or constitute a nuisance.

(b) Collectors must adhere to all federal, state, and local regulations for such service.

Secs. 8-37—8-45. - Reserved.

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Chapter 8

Garbage and Refuse, Recyclables, and Yard Waste

Art. I. In General, §§ 8-1 – 8-14

Art. II Collection by town, §§ 8-15 – 8-34

Art. III Collection by others, §§ 8-35 -

ARTICLE I. - IN GENERAL

Sec. 8-1. – Definitions

For the purposes of this chapter, the following words and terms shall have the meanings ascribed to them by this section.

Bin – Town or contractor furnished recyclable materials container.

Collection – Removal of solid waste, garbage and refuse and/or recyclable materials from its place of origin or storage to a collection vehicle.

Collection vehicle – Any vehicle used to collect or transport solid waste, garbage and refuse or recyclable materials.

Collector – Any person engaged in the business of collection and transportation of solid waste, garbage and refuse or recyclable materials.

Commercial /business waste - Solid waste, garbage and refuse or recyclable materials emanating from establishments engaged in business operations other than manufacturing. This category includes but is not limited to solid waste, garbage and refuse or recyclable materials emanating from such establishments as stores, markets, offices, and restaurants.

Construction, clearing and/or demolition debris- The waste building material, packaging, and rubble resulting from construction, land clearing, remodeling, repair, and demolition operations on pavements, houses, vacant land, commercial buildings, and other structures.

Dumpster - Any container having a capacity in excess of one hundred (100) gallons designed to contain solid waste, refuse, and garbage, or recyclable materials and which is emptied by mechanical means.

Dumpster enclosure – A solid opaque wood fence or masonry wall enclosure six (6) feet in height in which a dumpster is placed.

Garbage- Putrescible animal or vegetable waste resulting from the handling, preparation, cooking, serving, or consumption of food.

Hazardous waste – Solid waste which because of its inherent nature and/or qualities requires special handling during disposal to avoid creating environmental damage or hazards to public health or safety or

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landfill operations. Hazardous waste includes but it not limited to such items as petroleum waste, paints, plastics, explosives, acids, caustics, chemicals, poisons, drugs, radioactive materials, asbestos fibers, imported wool fibers, pathogenic wastes from hospitals, sanitariums, nursing homes, clinics and veterinary hospitals, waste from slaughterhouses, poultry processing plants and the like. (Residential solid waste normally contains very small amounts of hazardous waste but because they are found in such small amounts present no special problems for landfill operations. Therefore, residential waste is not considered to be hazardous waste within the meaning of hazardous waste used in the chapter).

Household waste – See “residential/household waste”.

Industrial waste- All solid waste, garbage and refuse or recyclable materials emanating from manufacturing, assembly of material, recycling, and other industrial activities.

Mixed paper- Paper accepted for recycling by the Town.

Occupant – The person who resides on premises as owner or tenant.

Qualified commercial/business occupancy – A licensed business located within the special collection zone and meeting the requirements for garbage and refuse and/or recyclable materials collection by the town.

Recyclable Materials – Raw or processed material that can be recovered from the waste stream for reuse.

Refuse – Discarded items including but not limited to paper, cartons, boxes, debris, cans, glass, food packaging, clothing and the like. Refuse does not include hazardous or unacceptable waste.

Residential/household waste - Garbage and refuse or recyclable materials emanating from single-family detached homes or condominiums, attached residential units, and apartments.

Sanitary landfill – A landsite on which engineering principles are utilized to bury deposits of solid waste without creating nuisances or hazards to public health or safety.

Solid Waste – As defined in 9 VAC 20-80-140 of the Solid Waste Management Regulations, Department of Environmental Quality, Commonwealth of Virginia.

Toter – Town or contractor furnished wheeled waste containers for each designated household or qualified commercial/business occupancy.

Town manager – The town manager of the Town of Berryville, Virginia, or authorized designee.

Town planner – The assistant town manager for community development/operations of the Town of Berryville, Virginia, or authorized designee.

Transportation – The transporting of solid waste, garbage and refuse or recyclable materials from the place of collection to a disposal facility.

Unacceptable waste – Items enumerated in Sec. 8-22 of this chapter.

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Vacant Property – A lot or parcel of real property either not improved by any structure or having a structure or structures neither occupied as a residence or devoted to any other use involving the presence of employees or other persons on business days.

Waste – Useless, unwanted, or discarded materials.

Waste generator – The person or entity who actually produces the residential, commercial, household, industrial, or institutional/governmental solid waste.

Yard waste – Leaves, twigs, shrubbery, and branches less than six (6) inches in diameter.

Sec. 8-2. - Violations of chapter.

Unless otherwise specifically provided, a violation of any provision of this chapter shall constitute a Class 4 misdemeanor.

Cross reference— Penalty for Class 4 misdemeanor, § 1-11.

Sec. 8-3. - Unlawful accumulations.

- (a) It shall be unlawful for any owner or occupant of any premises within the town to allow solid waste, garbage, refuse, recyclable materials, ashes, trash, litter or other substances which might endanger the health of other residents of the town to accumulate on such premises.
- (b) The owner of any property in the town shall remove accumulations referred to in subsection (a) above from such property at intervals as may be prescribed by the town manager or designee. Reasonable notice of the date fixed by the town manager for such removal shall be given by mail or delivery of a written notice to the owner of such property.
- (c) Upon the failure of the owner of property to remove solid waste, garbage, refuse, recyclable materials, ashes, trash, litter and other substances which might endanger the health of other residents of the town, as provided in the notice given pursuant to subsection (b) above, the town manager may have such refuse, garbage, trash, litter and other substances removed and bill the owner for the work. Upon the owner's failure to pay such bill by tax billing time, such bill shall be placed upon the tax bill of the owner so delinquent and collected as taxes are collected.

(Code 1971, §§ 8-1, 8-3)

Cross reference— Open storage of inoperative vehicles in certain zoning districts, § 13-30; abandoned or discarded refrigerators or other airtight containers, § 13-31; cutting and removal of weeds and other foreign growth on vacant property, § 13-32; maintenance of property abutting Town Run, § 13-33.

State Law reference— Authority for above section, Code of Virginia, § 15.2-901.

Sec. 8-4. - Disposal in town of refuse, garbage, trash etc., accumulated outside town.

It shall be unlawful and a Class 3 misdemeanor for any person to place, dump or otherwise dispose of **solid waste**, refuse, garbage, trash, litter, recyclable materials or any other unsightly matter that has been accumulated or collected outside the corporate limits of the town at any place within the town.

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(Ord. of 2-13-73; Ord. of 2-13-79, § 8-15)

Cross reference— Penalty for Class 2 misdemeanor, § 1-11.

State Law reference – Authority for above section, Code of Virginia, § 15.2-928

Sec. 8-5. - Upsetting, tampering and misusing litter receptacles maintained by the town.

No person shall cause the removal, upsetting, mutilation or defacing of, or tamper with any litter receptacle maintained by the town, cause the contents thereof to be spilled or to be strewn in or upon any public place or private premises, or use such receptacle for disposal of commercial/business or household refuse.

(Ord. of 2-13-01)

State Law reference— Authority for above section, Code of Virginia, Section 15.2-928.

Sec. 8-6. – Dumpsters, placement, enclosure, prohibited times for emptying.

- (a) No person shall locate any dumpster, **either temporarily or permanently**, in the town without written authorization from the town. **Applications to locate dumpsters will be reviewed in accordance with this chapter and policies and procedures established by the council or town manager.**
- (b) Placement or location of dumpsters for less than 180 days:
- a. ~~No person shall place any dumpster in the public right-of-way without written authorization from the town planner, who may as a condition of approval require safety measures deemed necessary, proof of insurance, and maximum time dumpster may remain on said right-of-way. No dumpster may be located in the public right-of-way within the Special Flood Hazard Area as identified on the Flood Insurance Rate Map.~~
 - b. ~~No person shall place any dumpster on private property without written authorization from the town planner, who may as a condition of approval require safety measures deemed necessary and a maximum time the dumpster may remain on said property. No dumpster may be located within the Special Flood Hazard Area as identified on the Flood Insurance Rate Map unless the town planner determines that necessary steps will be taken to secure the dumpster in a manner that will prevent it from becoming a hazard during a flood event.~~
- (c) Placement or location of dumpsters for more than 180 days:
- a. ~~No person shall place any dumpster in the public right-of-way for a period exceeding 180 days.~~
 - b. ~~No person shall place a dumpster on property not within the public right-of-way, without written authorization from the town planner, who may not permit the siting of a dumpster in such a way that the collection of solid waste or recyclable materials will impede pedestrian or vehicular traffic on public rights-of-way or otherwise create a safety hazard.~~
 - c. ~~All dumpsters visible from a public right-of-way shall be enclosed within a dumpster enclosure.~~

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- ~~d. No dumpster may be located within the Floodway portion of the Special Flood Hazard Area as identified on the Flood Insurance Rate Map unless the town planner determines that necessary steps will be taken to secure the dumpster in a manner that will prevent it from becoming a hazard during a flood event.~~
- ~~e. The town planner shall review the placement of dumpsters and siting and construction of required dumpster enclosures.~~

(b) All dumpsters visible from a public right-of-way shall be enclosed within **an approved** dumpster enclosure.

(c) All dumpsters, and the immediate area around them, shall be kept clean and sanitary at all times. Solid waste shall be completely contained within such container, all doors of the unit shall be kept closed, and all drain plugs shall be tightly secured.

(d) It shall be unlawful for any individual, business or corporation to empty a dumpster in town between the hours of 10:00 p.m. and 7:00 a.m. except within industrially zoned areas of the town.

State Law reference – Authority for above section, Code of Virginia, § 15.2-930

(Ord. of 1-12-99)

Sec. 8-7. – Requirements for collection vehicles

- (a) All collection vehicles shall be kept and maintained in a clean and sanitary condition, and shall be so constructed, maintained and operated as to prevent spillage of the type of solid waste, garbage and refuse, and recyclables to be transported therein. All collection vehicles used in the collection of garbage shall be constructed and maintained with watertight bodies and with covers of metallic or other rigid, impervious material, or, in the alternative, the entire bodies thereof shall be enclosed, with only loading hoppers exposed.
- (b) Special vehicles used in new or experimental methods of refuse collection may be permitted by the town manager, when such authorization is in writing.

Sec. 8-8. – Picking through contents **of** toters, **bins**, or dumpsters.

It shall be unlawful for any person to pick through, handle or interfere with the contents of any toter, **bin**, or dumpster under the provisions of this article. Collectors, employees of the town or other governmental agencies involved in duly authorized investigations, as well as the occupant or waste generator utilizing the toter, **bin**, or dumpster, shall be exempt from this prohibition.

Secs. 8-9—8-14. - Reserved.

ARTICLE II. - COLLECTION BY TOWN

FOOTNOTE(S):

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Cross reference— Department of public works responsible for refuse collection, § 2-53.

State Law reference— Local recycling and waste disposal; powers; penalties, Code of Virginia, § 15.2-928. Authority for town to regulate garbage and refuse disposal, Code of Virginia, § 15.2-927. Regulation of garbage and refuse pickup and disposal services; contracting for such services, Code of Virginia, § 15.2-930

Sec. 8-15 – Collection of garbage and refuse and recyclable materials

The town will furnish garbage and refuse and recyclable materials collection for ~~single-family detached, duplexes, townhouses, commercial/business occupancies, and institutional occupancies in the town~~ in accordance with provisions of this chapter and policies and procedures established by the council ~~and~~ or town manager.

Sect. 8-16 - Special service areas

The council may by ordinance establish a special service areas, in which the town will furnish enhanced garbage and refuse and/ or recyclables collection to qualified ~~commercial/business and institutional occupancies, as well as collection service for multi-family residential developments.~~ The ordinance establishing ~~the a~~ a special service area will delineate boundaries of the area, ~~and~~ establish requirements for provision of collection services, **and the services provided**. Upon establishment of a special service area the Town will furnish garbage and refuse and/or recyclables collection to qualified occupancies within the town's special service area town in accordance with provisions of this chapter and policies and procedures established by the council or town manager.

Sec. 8-17. - Collection times and routes – garbage and refuse and recyclable materials.

The town manager shall establish and specify the days and hours each week when garbage and refuse and recyclable materials will be collected and the routes to be served at the times so specified.

(Ord. of 2-13-79, § 8-14)

State Law reference – Authority for above section, Code of Virginia, § 15.2-928.

Sec. 8-18. - Containers generally **and preparation for collection** – garbage and refuse.

- (a) All garbage and refuse to be collected by the town shall be ~~placed in securely closed disposable plastic bags and~~ **prepared and** placed in approved containers ~~toters in accordance with provisions of this chapter and policies and procedures established by the council or town manager.~~ **All such non-disposable containers, whether toters or dumpsters, shall have an integrated lid to prevent the intrusion of water and disturbance by animals and entrance by insects.**
- (b) ~~Garbage and refuse collected by the town shall be placed in approved containers.~~
- (c) ~~Garbage and refuse shall be placed inside the approved container in such a manner that allows for the integrated lid to completely close.~~

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- ~~(d) No person shall place any garbage and refuse in approved container without first draining any liquid from such waste.~~
- (b) The occupant of the premises supplied with the toter(s) to maintain it in a clean and sanitary condition.
- (c) Containers **Toters** issued by the town or its contactor are the property of issuing entity. **Toters shall bear address or collection identification required in accordance with provisions of this chapter and policies and procedures established by the council or town manager.** Toters shall not be removed from the assigned toter address **premises to which they are assigned.**
- (d) Damaged toters reported to the town will be repaired or replaced **as needed.** The cost to replace or repair toters that are intentionally damaged or removed will be charged to the owners or tenants at the assigned address. In such instances, the owners or tenants will be assessed a replacement fee **in accordance with provisions of this chapter and policies and procedures established by the council or town manager** to be determined by the town manager, not to exceed 120 percent of the actual replacement cost.

State Law reference – Authority for above section, Code of Virginia, § 15.2-928.

(Ord. of 2-13-79, §§ 8-5, 8-7; Ord. of 11-13-90; Ord. of 10-13-98)

Sec. 8-19. – Containers generally **and preparation for collection**– For recyclable materials.

- (a) All recyclable materials, ~~with the exception of cardboard,~~ to be collected by the town shall be **prepared and** placed in **or beside** a non-disposable **bin(s)** container provided by the town or its contractor **in accordance with provisions of this chapter and policies and procedures established by the council or town manager.** All liquids shall be drained from the item prior to placement in the container.
- (b) All items placed in the non-disposable container shall be done in a manner to prevent escape as a result of wind and weather conditions.
- (b) **The occupant of the premises supplied with the bin(s) to maintain it in a clean and sanitary condition.**
- (c) **Bins issued by the town or its contactor are the property of issuing entity. Bins shall bear address and/or collection identification required in accordance with provisions of this chapter and policies and procedures established by the council or town manager. Bins shall not be removed from the premises to which they are assigned.**
- (d) **Damaged bins reported to the town will be replaced as needed. The cost to replace bins that are intentionally damaged or removed will be charged to the owners or tenants at the assigned address. In such instances, the owners or tenants will be assessed a replacement fee in accordance with provisions of this chapter and policies and procedures established by the council or town manager.**

State Law reference – Authority for above section, Code of Virginia, § 15.2-928.

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~~Sec. 8-20. – Preparation of cardboard for collection with recyclable materials.~~

~~Cardboard containers to be collected by the town or its contractor for recycling, need not be placed in containers but will be collected if flattened and securely tied in compact bundles that can be handled by one collector. No such bundle shall exceed four (4) feet in length and fifty (50) pounds in weight.~~

~~(Ord. of 2-13-79, § 8-9; Ord. of 10-13-98)~~

~~State Law reference – Authority for above section, Code of Virginia, § 15.2-928.~~

Sec. 8-20 - Reserved

Sec. 8-21. - Placement of containers on collection day; ~~collectors not to enter building~~ **garbage and refuse and recycling.**

- (a) All totes and recycling containers **bins** containing materials for collection by the town shall be set out not later than 7:00 a.m. on collection days. No totes or containers **bins** may be set out for collection more than twenty-four (24) hours before the established collection time and empty totes and containers **bins** shall be removed on the same day of collection.
- (b) Totes set out for collection shall be placed near the edge of pavement, edge of road, or in a location approved by the town manager to enable the automatic arm of the collection vehicle to pick up the tote. No collector shall enter any building for removal of garbage and refuse.
- (c) Recycling containers **bins** and cardboard bundles set out for collection shall be placed near the edge of pavement, edge of road, or in a location approved by the town manager, so they can be reached easily by the collectors. No collector shall enter any building for removal of recyclable materials.

~~(Ord. of 2-13-79, §§ 8-16, 8-17; Ord. of 11-13-90; Ord. of 10-13-98)~~

~~State Law reference – Authority for above section, Code of Virginia, § 15.2-928.~~

Sec. 8-22. - Certain solid waste and refuse and garbage not to be collected.

- (a) Rejected building materials, tin, contractors' waste, industrial waste, automobiles or parts thereof, **including tires, and hazardous materials** shall not be collected by the town. In the event such material is found at collection points, ~~the persons placing the same for collection shall be required to remove the same immediately~~ **collector shall tag the subject tote as unacceptable** and notify the town manager.
- (b) Hazardous waste shall not be collected by the town. ~~Radioactive materials, drugs, poison and like substances~~ **In the event such material is found at collection points, collector shall tag the subject tote as unacceptable and immediately notify the town manager. Said materials shall**

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only be removed under the supervision of persons qualified in the handling of such materials **hazardous waste**.

- (c) No livestock animal or fowl excrement shall be collected by the town, and no such excrement shall be placed in any container set out for collection by the town. **In the event such material is found at collection points, collector shall tag the subject toter as unacceptable and notify the town manager.**
- (d) Ashes containing live coals shall not be collected by the town. **In the event such material is found at collection points, collector shall tag the subject toter as unacceptable and immediately notify the town manager.**
- (e) **Other materials prohibited from collection may be established accordance with provisions of this chapter and policies and procedures established by the council or town manager.**

State Law reference – Authority for above section, Code of Virginia, § 15.2-928.

Sec. 8-23. – Yard waste collection general.

The Town will furnish collection of yard waste from parcels in the town that is generated by owners or occupants in accordance with provisions of this chapter and policies and procedures established by the council or town manager.

Sec. 8-24. – Collection times and route – yard waste.

The town manager shall establish and specify the days and hours when yard waste will be collected and the routes to be served at the times so specified.

Sec. 8-25. - Preparation of yard waste for collection. **Containers generally and preparation for collection**– For yard waste.

- (a) **All yard waste to be collected by the town, shall be prepared for collection in accordance with the provisions of this chapter and polices and procedures established by the council or town manager.** Small tree branches, shrubbery, and brush to be collected by the town shall be securely tied in compact bundles that can be handled by one collector. No such bundle shall exceed four (4) feet in length, twelve (12) inches in diameter and fifty (50) pounds in weight. Large branches to be collected shall not exceed four (4) feet in length, six (6) inches in diameter and fifty (50) pounds in weight. Bundles and large branches to be collected by the town shall be placed near the edge of pavement, or edge of road, or in a location approved by the town manger so they can be easily reached by the collectors.
- (b) ~~Leaves to be collected by the town during the annual leaf collection period shall be piled adjacent to street curbs, but shall not cover any portion of a sidewalk. Leaf piles shall contain no rocks or other items that might damage the leaf collection equipment. During the annual leaf collection period leaves will be collected by the town in accordance with standards and a schedule approved by the town manager and posted on the town website.~~
- (c) ~~Loose yard waste to be collected by the town shall be placed in paper bags and placed near the edge of pavement, edge of road, or in a location approved by the town manager, so they can be reached easily~~

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~~by the collectors. No such bag may exceed fifty (50) pounds in weight. All paper bags containing loose yard waste for collection by the town shall be set out not later than 7:00 a.m. on collection days. No such bags may be set out for collection more than twenty-four (24) hours before the established collection time.~~

- ~~(d) No single collection for any parcel shall exceed a total of 10 bundles, branches, or bags.~~
- (b) **Yard waste placed for collection that does not meet preparation standards or exceeds collection limits shall be tagged and left in place.**
- (c) The town manager may suspend or modify yard waste preparation requirements and collection limits **established in accordance with this chapter and the policies and procedures established by the council or town manager** if he **the town manager** determines such a suspension or modification necessary; provided that, the determination is made in writing, is reported to the council within fifteen (15) days of the determination, and no single such determination suspends or modifies requirements for more than ninety (90) days. **Notice of such suspension or modification shall be provided to the public in accordance with standard practice of the town.**

(Ord. of 10-13-98)

State Law reference – Authority for above section, Code of Virginia, § 15.2-928.

Sec. 8-26. – Certain yard waste not to be collected

- (a) Rocks and hardscape materials, large stumps, any stumps containing rocks and dirt, dirt, sod, plastic bags, grass clippings, food waste shall not be collected by the Town.
- (b) **Yard waste placed for collection containing unacceptable yard waste shall be tagged and left in place.**
- (c) **Other materials prohibited from collection may be established accordance with provisions of this chapter and policies and procedures established by the council or town manager.**

Secs. 8-27—8-35. - Reserved.

ARTICLE III. - COLLECTION BY OTHERS

Sec. 8-36. – Collection provided by others

- (a) Owners or tenants of properties that do not receive collection services provided by the town shall be responsible for securing the services of a private waste hauler.
- (b) **Areas in which solid waste is stored shall be keep clean and sanitary at all times. Solid waste shall be completely contained within dumpsters or containers.**
- (c) Solid waste and garbage and refuse must be removed at intervals necessary to prevent a condition that might endanger the health of residents of the town or constitute a nuisance.
- (d) Collectors must adhere to all federal, state, and local regulations for such service **relating to collection, transportation, and disposal of solid waste.**

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Secs. 8-37—8-45. - Reserved.

Rough Draft of Collection Policy

Garbage and Refuse, Recyclables, and Yard Waste Policy

Draft Dated April 26, 2018 – Version 1.0

Purpose:

The Town of Berryville regulates the storage, collection, and transportation of solid waste within its corporate boundaries in order to promote and protect the health, safety, and welfare of its residents and visitors. Such activities shall be regulated in accordance with federal, state, and local law.

Policy:

Applicable provisions of the Berryville Code, procedures contained herein, and determinations made by the Council or town manager in accordance with Berryville Code or this Policy; shall constitute local requirements for the storage and collection of solid waste in town and its transportation from town. The Town of Berryville reserves the right to modify requirements, including collection routes and schedules, as needed.

Procedures:

Garbage and Refuse, Recyclables, and Yard Waste Collection

Garbage and Refuse Collection

Single-family residential uses:

The Town of Berryville provides once per week curbside garbage and refuse collection for single-family detached, duplex, and townhouse, uses in the town in accordance with provisions of this chapter and policies and procedures established by the Council or town manager.

Garbage and refuse shall be prepared and placed for collection in accordance Appendix 1.

Toters will be issued in accordance with the table in Appendix 2. Decals XXXX.

Collection will occur in accordance with routes and schedules in Appendix 3.

Commercial/Business, multi-family & institutional uses:

The Town of Berryville provides once per week or twice per week curbside garbage and refuse collection for designated commercial/business occupancies, multi-family, and institutional occupancies in the town in accordance with provisions of this chapter and policies and procedures established by the Council or town manager.

Service is provided to qualified uses within the Special Service Area in accordance with the Special Service Area Ordinance adopted by the Council on XX/XX/XXXX (Appendix 4).

Garbage and refuse shall be prepared and placed for collection in accordance Appendix 1.

Toters will be issued in accordance with the table in Appendix 2. Decals XXXX

Collection will occur in accordance with routes and schedules in Appendix 3.

Bulk Collection:

Electronics, appliances, air conditioners, and the like

XXXX

Decals XXXX

Collection will occur in accordance with routes and schedules in Appendix 3.

Furniture, mattresses, and the like:

XXXX

Collection will occur in accordance with routes and schedules in Appendix 3.

Recyclables Collection

Single-family residential uses:

The Town of Berryville provides once per week curbside recyclable materials collection for single-family detached, duplex, and townhouse uses in the town in accordance with provisions of this chapter and policies and procedures established by the Council or town manager.

Recyclable materials shall be prepared and placed for collection in accordance Appendix 1.

Bins will be issued in accordance with the table in Appendix 2. Decals XXXX

Collection will occur in accordance with routes and schedules in Appendix 3.

Commercial/Business, multi-family & institutional uses

The Town of Berryville provides once per week curbside recyclable materials collection for designated commercial/business, multi-family, and institutional uses in the town in accordance with provisions of this chapter and policies and procedures established by the Council or town manager.

Service is provided to qualified uses within the Special Service Area in accordance with the Special Service Area Ordinance adopted by the Council on XX/XX/XXXX (Appendix 4).

Recyclable materials shall be prepared and placed for collection in accordance Appendix 1.

Bins will be issued in accordance with the table in Appendix 2. Decals XXXX

Collection will occur in accordance with routes and schedules in Appendix 3.

Yard Waste Collection

Single-family residential uses:

The Town of Berryville provides once per week curbside yard waste collection for single-family detached, duplex, and townhouse uses in the town in accordance with provisions of this chapter and policies and procedures established by the Council or town manager.

Yard waste shall be prepared and placed for collection in accordance Appendix 1.

Collection will occur in accordance with routes and schedules in Appendix 3.

Dumpsters

Permit to locate dumpster - generally

- a. No person shall locate any dumpster, either temporarily or permanently, in the town without written authorization from the town.
- b. Applications to locate dumpsters, along with application fees, shall be submitted to the Planning Department.
- c. The Planning Department will review applications for compliance with Berryville Code, Berryville Zoning Ordinance, this Policy, as well as determinations of the Council or town manager made in accordance with the Berryville Code or this Policy.

Temporary placement or location of dumpsters (maximum of 180 days):

- a. Within street right-of-way (Town) – Planning Department may condition approval on provision of safety measures deemed necessary, proof of insurance, and maximum time dumpster may remain on right-of-way. No dumpster may be located in the public right-of-way within the Special Flood Hazard Area as identified on the Flood Insurance Rate Map.
- b. Within street right-of-way (VDOT) - Planning Department may condition approval on VDOT approval, provision of safety measures deemed necessary, proof of insurance, and maximum time dumpster may remain on right-of-way. No dumpster may be located in the public right-of-way within the Special Flood Hazard Area as identified on the Flood Insurance Rate Map.
- c. On private property or public property not within street rights-of-way – Planning Department may condition approval on provision of safety measures deemed necessary and maximum time dumpster may remain on property. No dumpster may be located within the Special Flood Hazard Area as identified on the Flood Insurance Rate Map unless the town planner determines that necessary steps will be taken to secure the dumpster in a manner that will prevent it from becoming a hazard during a flood event.

Permeant placement or location of dumpsters (in excess of 180 days):

- a. Within street right-of-way (Town) - No dumpster may be placed or located in a street right-of-way for a period exceeding 180 days.
- b. Within street right-of-way (VDOT) – No dumpster may be placed or located in a street right-of-way for a period exceeding 180 days.
- c. On private property or public property not within street rights-of-way – Planning department will condition approval upon siting and construction of any required screening or enclosure. No dumpster may be sited in such a way that the collection of solid waste or recyclable materials will impede pedestrian or vehicular traffic on public rights-of-way or otherwise create a safety hazard. No dumpster may be located within the Floodway portion of the Special Flood Hazard Area as identified on the Flood Insurance Rate Map unless the town planner determines that necessary steps will be taken to secure the dumpster in a manner that will prevent it from becoming a hazard during a flood event.

Maintenance of dumpsters, dumpster pads, dumpster enclosures, and surrounding area

- a. All dumpsters, and the immediate area around them, shall be kept clean and sanitary at all times.
- b. Solid waste shall be completely contained within such container, all doors of the unit shall be kept closed, and all drain plugs shall be tightly secured.
- c. Solid waste must be removed at intervals necessary to prevent a condition that might endanger the health of residents of the town or constitute a nuisance.

**Rough Draft of
Appendix 1
(Collection Policy)**

Appendix 1

Garbage and refuse

Garbage and refuse accepted for collection

XXXX

Garbage and refuse not collected

Preparation and placement for collection – garbage and refuse.

- (a) All garbage and refuse to be collected by the town shall be placed in securely closed disposable plastic bags and placed in toters in accordance with provisions of the Berryville Code and this Policy.
- (b) Garbage and refuse shall be placed inside the toter in such a manner that allows for the integrated lid to completely close.
- (c) All toters containing materials for collection by the town shall be set out not later than 7:00 a.m. on collection days. No toters may be set out for collection more than twenty-four (24) hours before the established collection time and empty toters shall be removed on the same day of collection.
- (b) Toters set out for collection shall be placed near the edge of pavement, edge of road, or in a location approved by the town manager to enable the automatic arm of the collection vehicle to pick up the toter. No collector shall enter any building for removal of garbage and refuse.

Recyclables

Recyclables accepted for collection

XXXX

Recyclables not collected

XXXX

Preparation and placement for collection– Recyclable materials (except cardboard)

- (a) All recyclable materials, with the exception of cardboard, to be collected by the town shall be placed in a bin provided by the town or its contractor in accordance with provisions of the Berryville Code and this Policy. All liquids shall be drained from the item prior to placement in the container.
- (b) All items placed in the non-disposable container shall be done in a manner to prevent escape as a result of wind and weather conditions.
- (a) All bins containing materials for collection by the town shall be set out not later than 7:00 a.m. on collection days. No bins may be set out for collection more than twenty-four (24) hours before the established collection time and empty bins shall be removed on the same day of collection.

- (b) Bins set out for collection shall be placed near the edge of pavement, edge of road, or in a location approved by the town manager to enable the automatic arm of the collection vehicle to pick up the totter. No collector shall enter any building for removal of recyclable materials.

Preparation and placement for collection - Recyclable materials - Cardboard

- (a) Cardboard containers to be collected by the town or its contractor for recycling, need not be placed in containers but will be collected if flattened and securely tied in compact bundles that can be handled by one collector. No such bundle shall exceed four (4) feet in length and fifty (50) pounds in weight.
- (b) Bundles shall be placed beside bins. No collector shall enter any building for removal of cardboard.

Yard waste

Yard waste accepted for collection

XXXX

Yard waste not collected

XXXX

Preparation and placement for collection- Yard waste

- (a) Small tree branches, shrubbery, and brush to be collected by the town shall be securely tied in compact bundles that can be handled by one collector. No such bundle shall exceed four (4) feet in length, twelve (12) inches in diameter and fifty (50) pounds in weight. Large branches to be collected shall not exceed four (4) feet in length, six (6) inches in diameter and fifty (50) pounds in weight. Bundles and large branches to be collected by the town shall be placed near the edge of pavement, or edge of road, or in a location approved by the town manger so they can be easily reached by the collectors.
- (b) Leaves to be collected by the town during the annual leaf collection period shall be piled adjacent to street curbs, but shall not cover any portion of a sidewalk. Leaf piles shall contain no rocks or other items that might damage the leaf collection equipment. During the annual leaf collection period leaves will be collected by the town in accordance with standards and a schedule approved by the town manager and posted on the town website.
- (c) Loose yard waste to be collected by the town shall be placed in paper bags and placed near the edge of pavement, edge of road, or in a location approved by the town manager, so they can be reached easily by the collectors. No such bag may exceed fifty (50) pounds in weight. All paper bags containing loose yard waste for collection by the town shall be set out not later than 7:00 a.m. on collection days. No such bags may be set out for collection more than twenty-four (24) hours before the established collection time.
- (d) No single collection for any parcel shall exceed a total of 10 bundles, branches, or bags.
- (e) The town manager may suspend or modify yard waste preparation requirements and collection limits if he determines such a suspension or modification necessary; provided that, the determination is made

in writing, is reported to the council within fifteen (15) days of the determination, and no single such determination suspends or modifies requirements for more than ninety (90) days.