



McLean Citizens Association Resolution
Noise Ordinance Amendment
May 6, 2015

Whereas, on December 3, 2013 the Fairfax County Board of Supervisors requested a review and revision of the Noise Ordinance, Chapter 108 of the Fairfax County Code; and

Whereas, as a result of Fairfax County's interpretation of a Virginia Supreme Court ruling on the constitutionality of certain sections of the Noise Ordinance of the City of Virginia Beach, Fairfax County has chosen not to enforce the affected parts of its existing Noise Ordinance; and

Whereas, Fairfax County is now proposing to repeal the existing Noise Ordinance, Chapter 108, in its entirety, and adopt a new Noise Ordinance designated Chapter 108.1; and

Whereas, the overall goals of the Noise Ordinance Amendment (Amendment) are to:

- 1) Better address the methodology used in noise measurements,
- 2) Consider the appropriateness of establishing day and nighttime noise levels to protect the community,
- 3) Add other objective criteria to regulate noise; and

Whereas, in the General Provisions of the Amendment, the Fairfax County Board of Supervisors would hereby find and declare that:

- a) Certain noise is a serious hazard to the public health, welfare, peace and safety and the quality of life;
- b) People have a right to and should be ensured of an environment free from such noise sound;
- c) It is the policy of the Board to prevent such noise;
 - a. As long as a citizen's First Amendment rights are not violated;
 - b. Or that such noise is permitted by Federal or State law; and

Whereas, the staff report cites the rapid urbanization of Fairfax County as, in part, a driving need to allow greater noise levels; and

Whereas, the Amendment would permit a daytime maximum sound level of 60 dBA in Residential Areas and a nighttime maximum sound level of 55 dBA between 10 p.m. to 7 a.m.; and

Whereas, while areas such as Tysons, Reston Town Center and Merrifield are urbanizing, Fairfax County is 400 square miles of predominantly (47%) single-family detached dwellings in low-density suburban neighborhoods normally associated with low ambient noise; and

Whereas, the McLean Citizens Association believes Fairfax County should preserve residential neighborhood tranquility in the face of rising urbanization; and

Whereas, the subject Amendment defines a use category of Non-Residential Areas in Residential Districts; and,

Whereas, this use category, which would include churches, public facilities and Special Exception/Special Permit uses on residentially zoned properties, would have a maximum sound level of 60 dBA both day and night; and

Whereas, these uses abut properties with residential dwellings and such Special Exception and Special Permits were approved with the understanding the communities were protected from undue noise impacts by the 55 dBA sound maximum as codified in the existing Noise Ordinance; and

Whereas, all noises related to the construction, repair, remodeling or demolition of real property would be permitted a maximum sound level of 90 dBA in residential areas from 7 a.m. to 9 p.m., or 14 hours a day; and

Whereas, the National Institute for Occupational Safety and Health (NIOSH) recommends and several federal agencies require that exposure to 90 dBA of noise be limited to less than two hours per day, unless hearing protection is utilized; and

Whereas, certain construction noise sources can be quieted through the use of available attenuation devices and measures as is currently required by the Noise Ordinance of New York City; and

Whereas, the subject Amendment would define a new use classification, Mixed Use Area, for parcels having both residential and non-residential uses, with a daytime and nighttime maximum sound level of 65 dBA; and

Whereas, the broadly defined Mixed Use Area classification would lump together both the Tysons Urban Center and small, isolated parcels in areas, such as the McLean Community Business Center (CBC), with residential dwelling units and ground floor retail with limited hours, and the general presumption of appropriately low nighttime noise levels; and

Whereas, a maximum of 65 dBA would be appropriate for Tysons, which is planned as a dense urban area, and all new residential, hotel and office construction in the Planned Tysons Corner (PTC) zoning district is required to incorporate significant noise attenuation measures to reduce the penetration of outdoor noise; and

Whereas, the higher allowable noise levels of a Tysons downtown should not be applied to periphery communities and less intense activity centers; and

Whereas, while parcels in the PTC district are planned as mixed use, some parcels may be single-use residential which, per the proposed Amendment, would qualify them as a Residential Area with a lower noise maximum making noise enforcement more difficult; and

Whereas, existing residential developments, such as McLean Crest in the McLean CBC, proximate to a mixed use development that was approved when the maximum sound level was 55 dBA, would be subject to a 10 dB increase in daytime and nighttime sound level; and

Whereas, McLean House, a high-rise condominium building in the McLean CBC, has non-residential units and would be classified as a Mixed Use area subject to higher maximum sound limits; and

Whereas, the first floor non-residential units in McLean House are adjacent to residential units and share a single ingress/egress with the residential use; and

Whereas, older residential buildings do not have the increased sound attenuation that is recommended in the Comprehensive Plan for noisier environments; and

Whereas, the Amendment would introduce the regulation of Impulse Sound, defined as “*acoustical energy characterized by a rapid rise to a maximum sound pressure followed by a somewhat slower decrease in sound pressure, both occurring within a short time frame*”; and

Whereas, this definition of Impulse Sound is incomplete and omits the key distinguishing characteristic that impulse noise, as defined by NIOSH, is less than one second in duration, and is similarly defined as such in the Noise Ordinances of Arlington County, the City of Alexandria and the City of Falls Church; and

Whereas, this omission would allow periodic or short duration continuous noise to be erroneously interpreted as impulse noise and permitted a maximum level of 100 dBA instead of the proposed 60 dBA in Residential Areas; and

Whereas, the definition of Continuous Sound is likewise inaccurate as the Code of Federal Regulations 29 CFR 1910.12 defines continuous noise as “*noise whose maxima (highest levels) occur more often than once per second*”; and

Whereas, the definitions of Impulse and Continuous Sound would form the basis of noise regulation in the county and the hearing protection it provides for; and

Whereas, these inaccuracies in the definitions of Impulse and Continuous Sound would, 1) increase the complexity and difficulty of ordinance enforcement by Fairfax County Police and, 2) result in otherwise needless interpretations and determinations by the Fairfax County Zoning Administrator; and

Whereas, the Amendment would define a standard ANSI S1.4 Type 2 sound meter as the instrument that shall be used to measure sound pressure levels; and

Whereas, the ANSI S1.4 standard describes three methods of measuring Impulse Sounds, however the Amendment is silent on which method to use and, depending on which method is specified, the sound meter may need a special, non-standard feature; and

Whereas, the Amendment would grant a daytime Exception for band performances or practices and athletic contest or practices on school or recreational grounds; and

Whereas, this school and recreation area Exception would extend from 7 a.m. to 10 p.m. Sunday through Thursdays, and from 7 a.m. to 11 p.m. Friday, Saturday and the day before a Federal holiday; and

Whereas, in school year 2015-2016, Fairfax County high schools will begin classroom education no earlier than 8 a.m.; and

Whereas, this school and recreation area Exception would not apply to loudspeakers or musical instruments which would be limited a maximum sound level of [advertised between 60 and 72 dBA], except if the loudspeaker or instrument is within 50 yards of a residential dwelling, in which case the maximum sound level for that zoning district would apply; and

Whereas, for purposes of this Exception, instrument would exclude unamplified musical instruments; and

Whereas, the setting of a maximum sound level of 72 dBA for loudspeaker or instrument use would represent a 17 dB or 700 percent increase over the current 55 dBA maximum for residential districts; and

Whereas, the 50-yard restriction on proximity to a residential dwelling would be easily avoided by moving the loudspeaker or instrument a short distance; and

Whereas, the Amendment is silent on the use of hand-held, amplified bullhorns; and

Whereas, noise generated from the operation of transportation facilities would not be subject to regulation between the hours of 7 a.m. and 10 p.m.; and

Whereas, the Amendment allows persons responsible for any noise source to apply for a temporary waiver that would permit the, otherwise illegal, noise source; and

Whereas, such waivers could be granted by the Director of the Fairfax County Department of Public Works and Environmental Services (Director) after due consideration of the nature of the noise source, its impacts and the requested duration of the waiver; and

Whereas, any person aggrieved by a waiver decision of the Director could appeal the decision to the County Executive within 30 days from the date of the decision;

Now, therefore, be it resolved that the McLean Citizens Association opposes the repeal of Chapter 108 and the adoption of Chapter 108.1, Noise Ordinance, and recommends the Noise Ordinance Amendment be remanded to county staff for further analysis and reconsideration of the following issues:

- 1) The definitions of Impulse Sound and Continuous Sound be amended to more closely adhere to the definitions promulgated by the federal government,
- 2) Specify how Impulse Sound level should be measured using the Impulse response setting, Lmax, or peak sound level, any one of which, though resulting in slightly different readings, would be acceptable to the McLean Citizens Association,
- 3) The maximum sound level in Residential districts be retained at 55 dBA,
- 4) The Non-Residential Use in a Residential District category be eliminated from the Maximum Sound Levels table and such non-residential and Special Exception/Special Permit in uses adhere to the 55 dBA maximum,
- 5) The continuous and impulsive noise of construction-related activities of real property be limited to a maximum sound level of 80 dBA unless a Waiver is obtained,

- 6) The use of noise-reducing devices and attenuation measures be employed as appropriate for construction-related noise sources,
- 7) The use of loudspeakers and instruments on school or recreational grounds have a maximum sound level of 55 dBA, as measured at the property boundary, and start no earlier than 8 a.m.,
- 8) The accumulative use of loudspeakers and instruments on school or recreational grounds be limited to a maximum of 6 hours per day,
- 9) The use of hand-held, amplified bull horns be added to Section 108.1-4-1 (a) under Specific Prohibitions regulating loudspeaker use,
- 10) Section 108.1-5-1 (r) be modified to clarify that non-school related activities on school property, such as property rentals, leases or licenses to outside organizations, shall be subject to the sound levels in the Maximum Sound Levels table,
- 11) The Tyson Planned District be added as a separate zoning category in the Maximum Sound Levels table at 65 dBA day and night,
- 12) The maximum sound levels in Mixed Use Areas be established at 60 dBA from 10 p.m. to 7 a.m.,
- 13) The maximum sound levels in Mixed Use Areas revert to 55 dBA when the non-residential uses are closed,
- 14) Approval of mixed-use developments require noise attenuation measures to reduce indoor noise levels to 45 dBA Ldn in all residential units,
- 15) The nighttime impulse sound level in Residential districts be established at 70 dBA,
- 16) Sound levels in residential units in Mixed Use Areas, as measured through a common partition, be established at 55 dBA,
- 17) Maximum sound levels in the commercial district be lowered from 65 to 60 dBA from 10 p.m. to 7 a.m. at any property line abutting dwelling units in any district other than the Planned Tysons Corner district,
- 18) Nighttime impulse levels in the commercial district be established at 70 dBA from 10 p.m. to 7 a.m. at any property line abutting dwelling units in any district other than the Planned Tysons Corner district,
- 19) To the extent possible, a process be established whereby abutting landowners are notified when a waiver is requested,

And, be it further resolved, that the updated Noise Ordinance Amendment reflecting these comments be re-advertised on or before September 1, 2015 for public hearing,

And, be it further resolved, that the McLean Citizens Association requests that, 18 months after the adoption of Chapter 108.1, the Board of Supervisors direct staff to conduct a study on the effectiveness and enforceability of the Noise Ordinance to confirm the objectives of the Amendment were met, and publish a report of the study for public comment.

*Approved by the MCA Board of Directors
May 6, 2015*

McLean Citizens Association, PO Box 273, McLean, Virginia 22101

cc: John Foust, Dranesville District Supervisor
Benjamin Wiles, Staff
Fairfax County Board of Supervisors