Town of Dumfries
Council Meeting

Meeting Date:	May 22, 2012
Agenda Item#	X – A

AGENDA ITEM FORM

TYPE OF AGENDA ITEM:
- ☐ CONSENT AGENDA
- ☐ PRESENTATION
- ☐ ACTION ITEM
- ☐ TOWN MANAGER & STAFF COMMENTS
- ☑ PUBLIC HEARING
  - ☑ Duly Advertised

PURPOSE OF ITEM:
- ☐ INFORMATION ONLY
- ☐ DISCUSSION ONLY
- ☑ DISCUSSION AND/OR DECISION
  - ☐ Introduction ☐ Resolution
  - ☐ Ordinance ☐ Grant/MOU
  - ☑ By Motion ☐ Bylaws

PRESENTER: Robert E. Forker, Jr. **PRESENTER TITLE**: Chief of Police

AGENDA ITEM:

Public Hearing to Amend the Town's Noise Ordinance to Replace Subjective Noise Standards with Objective Noise Standards

BACKGROUND / SUMMARY:

At the May 8, 2012 Council Meeting staff introduced the proposed ordinance and was directed to make a couple of changes to the proposed ordinance and proceed with the public hearing. Those changes have been made and tonight Council will hear from the public during the public hearing and vote to introduce the ordinance.

ATTACHMENTS:

Public Hearing Notice
Old Noise Ordinance
Proposed Noise Ordinance

REQUESTED ACTION: ☐ NO ACTION REQUESTED

Motion to introduce the ordinance to be adopted at the June 5, 2012 meeting

FOR MORE INFORMATION, CONTACT: Name: Robert E. Forker, Jr.

Phone#: 703.221.1111 E-mail: rforker@dumfriesva.gov

FOR USE DURING MEETING **VOTE:** ☐ PASSED ☐ NOT PASSED

Y	N		Y	N		Y	N	
☐	☐	Barr	☐	☐	Foreman	☐	☐	Forrester
☐	☐	Jurgensen	☐	☐	Toney	☐	☐	Washington
☐	☐	Vacant						

NOTICE OF PUBLIC HEARING
BY THE TOWN COUNCIL
OF THE TOWN OF DUMFRIES, VIRGINIA ON
MAY 22, 2012 AT 7:00 PM

The Town Council of the Town of Dumfries hereby gives notice of a Public Hearing to consider an amendment to the Code of the Town of Dumfries, Noise Ordinance, Sections 26-60 thru 26-66.

All supporting material is available for public inspection at the Office of the Town Clerk at 17755 Main Street, Dumfries, Virginia, 22026 between the hours of 8:30 AM and 5:00 PM; M-F. The hearing will be held in Council Chambers at 17755 Main Street, believed to be accessible to persons with disabilities.

BY GERALD FOREMAN, MAYOR
TOWN OF DUMFRIES, VIRGINIA

Instruction to Publisher: Run this notice one time on May 10 and one time on May 17, 2012

ARTICLE III. NOISE*

Secs. 26-60-26-68. Reserved.

Sec. 26-69. Short title and application of article generally.

This article shall be known and may be cited as the "Noise Control Ordinance of the Town of Dumfries." It shall be applicable to the control of noises originating within the jurisdictional limits of the town and from town-owned lands locate outside the jurisdictional limits of the town.

(Ord. No. O-2007, § 1, 12-4-2007)

***Editor's note**- Ord. No. O-2007, § 1, adopted Dec. 4, 2007, repealed the former Art. III, §§ 26-60--26-68, and enacted a new Art. III, as set out herein. The former Art. III pertained to similar subject matter and derived from Ord. of Dec. 18, 2001, § 1(10-71—10-75, 10-78—10-80).

Sec. 26-70. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Ambient noise level shall mean the aggregate of all sound sources impacting at the place where a specific sound generation is measured or evaluated, excluding the specific sound generation itself.

Emergency shall mean any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

Motorcycle and *motor vehicle* shall have the meanings ascribed to them in Code of Virginia, § 46.2-100.

Property boundary shall mean an imaginary line along the ground surface, and its vertical extension, which separates the real property owned, leased, or otherwise legally controlled by one person from that owned, leased, or otherwise legally controlled by another, including intra-building real property divisions.

Public Space shall mean any real property owned, leased, or controlled by a governmental entity and normally accessible to the public.

Vehicle shall have the meaning ascribed to it in Code of Virginia, §46.2-100.

(Ord. No. O-2007, § 1, 12-4-2007)

Sec. 26.71. Administration and enforcement of article.

(a) This article shall be enforced and administered by the town police department.

(b) If conduct which would otherwise constitute a violation of this article consists of speech or the communication of persons gathered to hear or observed speech or communication or to picket or otherwise express in a nonviolent manner a position on social, economic, political or religious issues, then the violator must be ordered to, and have the opportunity to, move, disperse, or otherwise remedy the violation prior to arrest or issuance of a citation under this article.

(Ord. No. O-2007, § 1, 12-4-2007)

Sec. 26-72. Violations of article.

(a) Any person who violates any provision of this article shall be guilty of a class 3 misdemeanor.

(b) Each day of violation of any provision of this article shall constitute a separate offense.

(c) The person operating or controlling a noise source shall be guilty of any violation caused by that source. If such person cannot be determined, then any owner, tenant, or resident physically present on the property where the violation occurs shall be presumed guilty of a violation of this article.

(Ord. No. O-2007, § 1, 12-4-2007)

Sec. 26-73. General prohibition.

(a) No person shall create, continue, or cause to be created or continued, any unreasonably loud or raucous noise or any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of persons of reasonable sensitivity.

(b) Factors for determining whether a sound shall be considered a violation of this section include, but not limited to:

(1) The proximity of the sound to sleeping facilities, whether residential or commercial;

(2) The land use, nature, zoning, and ambient noise level of the area from which the sound emanates and the area where it is received or perceived;

(3) The time of day or night that the sound occurs;

(4) The duration, volume, and intensity of the sound; and

(5) The repetitive nature of the sound, in terms of recurrence, intermittency, or consistency

(6) *Animals and birds*. Unreasonably loud and raucous or repetitive noise emitted by an animal or bird for which a person is responsible, either through ownership or physical control.

(7) *Loading or unloading merchandise, materials, equipment.* The creation of unreasonably loud, raucous, or excessive noise in connection with the loading or unloading of any vehicle. Any vehicle loaded with materials likely to create loud and raucous noises shall take every reasonable effort to deaden the noise.

(8) *Construction or repair of buildings; excavations of streets and highways; unloading of construction materials.* Sound emanating from the construction, demolition, alteration, or repair of any building, from the excavation of any street or highway, or from the unloading of construction materials that is plainly audible across a property boundary between the hours of 7:00 p.m. and 7:00 a.m. on weekdays or between the hours of 9:00 p.m. and 9:00 a.m. on weekends and holidays.

(9) *Commercial establishments adjacent to residential property.* Unreasonably loud and raucous noise from the premises of any commercial establishment, including any outdoor area which is part of or under the control of a commercial establishment, between the hours of 10:00 p.m. and 7:00 a.m. and which is plainly audible across the property boundary between said commercial establishment and an adjacent residential property.

(10) *Burglar or fire alarms.* The sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm that continues for more than 15 minutes from activation, unless an emergency exists.

(Ord. No. O-2007, § 1, 12-4-2007)

Sec. 26-75. Exemptions from article.

Notwithstanding any other provision of this article to the contrary, sounds generated for any of the following purposes shall be exempt from the provisions of this article:

(1) To alert persons to the existence of an emergency or the emission of sound in the performance of emergency or other public safety work;

(2) To repair utility structures, bridges, streets, or highways that pose a clear and imminent danger to life, health, or significant loss of property;

(3) To conduct or engage in reasonable recreational, cultural, or leisure activities conducted on public playgrounds, stadiums, and on public or privates school grounds, including, but not limited to, school athletic and entertainment events;

(4) To engage in activities duly authorized under [subsection 26-74(6)]; and

(5) To operate locomotives, aircraft, and related equipment under normal operating conditions.

(Ord. No. O-2007, § 1, 12-4-2007

Sec. 26-76. Issuance of permits

The town manager shall be authorized to issue permits to persons allowing the production of noise that might otherwise be prohibited under this article, provided that such permits shall be limited to a specific event, time period, or activity. Such permits shall be issued in accordance with regulations promulgated by the town manager and published in the town administrative manual.

(Ord. No. O-2007, § 1, 12-4-2007)

Secs. 26-77—26-98. Reserved.

ARTICLE III. NOISE*

Sec. 26-60. – Declaration of policy

This article shall be known and may be cited as the "Noise Control Ordinance of the Town of Dumfries." It shall be applicable to the control of noises originating within the jurisdictional limits of the town and from town-owned lands locate outside the jurisdictional limits of the town.

A verbal warning shall be given prior to citing persons as defined by Section 26-61(B)(3) below with a violation of this Ordinance.

It is hereby declared to be the public policy of the Town of Dumfries to protect its citizens against excessive noise which is detrimental to life, health and enjoyment of property. In order to promote the public health, safety, welfare and the peace and quiet of the inhabitants of the town, the following measurements and standards relating to noise are hereby adopted.

***Editor's note-** Ord. No. O-2007, § 1, adopted Dec. 4, 2007, repealed the former Art. III, §§ 26-60--26-68, and enacted a new Art. III, as set out herein. The former Art. III pertained to similar subject matter and derived from Ord. of Dec. 18, 2001, § 1(10-71—10-75, 10-78—10-80).

Sec. 26-61. Definitions and Penalties.

A. Definitions

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

1. *A-weighted decibel* means the sound level, in decibels, measured with a sound level meter using the A-weighting network or scale as specified in the ANSI SI.4-1983 (specifications for sound level meters). The level so read shall be post scripted dB(A) or dBA.
2. *ANSI* means the American National Standards Institute, Inc. New York, New York.
3. *Chief* means the chief of police of Town of Dumfries or his authorized agents.
4. *Daytime* means the local time of day between the hours of 7:00 a.m. and 10:00 p.m. weekdays and from 9:00 a.m. to 10:00 p.m. on Saturdays, Sundays and legal holidays observed by town government unless otherwise specified.
5. *Decibel* means a unit that describes the sound pressure level or intensity of sound. The sound pressure level in decibels is twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound in microbars to a reference pressure of 1.002 microbar; abbreviated dB.
6. *Director* means the director of the department of public works or his authorized agent.
7. *Nighttime* means those times excluded from the definition of daytime.
8. *Noise* means any steady-state or impulsive sound occurring on either a continuous or intermittent basis that annoys or disturbs humans or that causes or tends to cause an adverse psychological or physiological effect on humans.
9. *Noise disturbance* means any sound which:
   (a) Endangers or injures the safety or health of humans; or

(b) Annoys or disturbs a reasonable person of normal sensitivities; or
(c) Endangers or injures personal or real property; or
(d) Exceeds the applicable maximum permissible sound levels as they appear in the table in section 26-62.

10. *Sound level meter* means an instrument to measure sound pressure levels that meets or exceeds performance standards for a Type 2 meter as specified by the ANSI.
11. *Sound pressure level* means the intensity in decibels (dB) of a sound.
12. *Zoning district classification* is the scheme of land use classification contained in the Town of Dumfries Zoning Ordinance.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

13. *Ambient noise level* shall mean the aggregate of all sound sources impacting at the place where a specific sound generation is measured or evaluated, excluding the specific sound generation itself.
14. *Emergency* shall mean any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.
15. *Motorcycle* and *motor vehicle* shall have the meanings ascribed to them in Code of Virginia, § 46.2-100.
16. *Property boundary* shall mean an imaginary line along the ground surface, and its vertical extension, which separates the real property owned, leased, or otherwise legally controlled by one person from that owned, leased, or otherwise legally controlled by another, including intra building real property divisions.
17. *Public Space* shall mean any real property owned, leased, or controlled by a governmental entity and normally accessible to the public.
18. *Vehicle* shall have the meaning ascribed to it in Code of Virginia, §46.2-100.

B. Penalties

(1) Any person who violates any provision of this article shall be guilty of a class 3 misdemeanor.

(2) Each day of violation of any provision of this article shall constitute a separate offense.

(3) The person operating or controlling a noise source shall be guilty of any violation caused by that source. If such person cannot be determined, then any owner, tenant, or resident physically present on the property where the violation occurs shall be presumed guilty of a violation of this article.

(Ord. No. O-2007, § 1, 12-4-2007)

Sec. 26.62. Maximum Permissible Sound Pressure Levels.

A. Except as otherwise provided, any noise which emanates from any operation, activity or source and which exceeds the maximum permissible sound levels established in this section below is hereby prohibited. Such levels shall be measured at the property boundary of the sound source or at any point within any other property affected by the noise. When a noise source can be

identified and its noise measured in more than one (1) zoning district classification, the limits of the most restrictive classification shall apply.

MAXIMUM PERMISSIBLE SOUND PRESSURE LEVELS

Classification	*Zoning District Maximum dBA Daytime*	*Nighttime*
Residential	60	55
Mixed Use District	60	55
Commercial	65	60
Office	65	60
Industrial	79	72

B. Heating and cooling systems, including but not limited to air conditioners and heat pumps, shall not be subject to the night levels enumerated above.
C. Any person, with lawfully obtained permits, who between the hours of 6:00 a.m. and 10:00 p.m. weekdays and between the hours of 9:00 a.m. and 10:00 p.m. on Saturdays, Sundays and legal holidays observed by town government operates or causes to be operated any equipment used in construction, repair, alteration or demolition work on buildings, structures, alleys or appurtenances thereto in the outdoors in any residential district within one hundred (100) yards of a lawfully occupied dwelling shall not be subject to the levels enumerated above.
D. Persons performing construction of public projects, repair or maintenance work for such projects or persons performing work for private or public utilities for the repair of facilities or restoration of services shall not be subject to the levels enumerated above.

Sec. 26-63. Prohibitions generally.

The following acts are violations of this chapter:

1. Sounding a horn or other signaling device on any motor vehicle except as an emergency or danger warning signal.

2. Operating a motor vehicle, other than an authorized emergency vehicle or a vehicle moving under special permit, which creates a noise disturbance

Operating or causing to be operated a public or private motor vehicle or motorcycle on a public right-of-way at any time in such a manner that the sound level emitted by the motor vehicle or motorcycle, when measured at a distance of fifty (50) feet or more, exceeds the level set forth in the following table:

(a)

	Sound level in dBA	
Vehicle Class	Speed limit 35 MPH or less	Speed limit over 35 MPH
All motor vehicles of GVWR or GCWR of 6,000 lbs or more	86	90

Any motorcycle	82	86
Any other motor vehicle or any combination of vehicles towed by any motor vehicle	76	82

(b) This section shall not apply to any motor carrier vehicle engaged in interstate commerce.

3. Operating, loading or unloading any vehicle, including but not limited to trucks, or the opening and destruction of bales, boxes, crates and containers in the outdoors for zones other than industrial within one hundred (100) yards of a lawfully occupied dwelling between the hours of 10:00 p.m. and 6:00 a.m.
4. Operating or causing to be operated between the hours of 10:00 p.m. and 6:00 a.m. on weekdays and between the hours of 10:00 p.m. and 9:00 a.m. on Saturdays, Sundays and legal holidays observed by town government any equipment used in construction, repair, alteration or demolition work on buildings, structures, alleys or appurtenances thereto in the outdoors in any residential district within one hundred (100) yards of a lawfully occupied dwelling. This section shall not apply to construction of public projects, the repair of maintenance work performed on such projects or work performed by private or public utility companies for the repair of facilities or restoration of services.

5. Using, operating or causing to be operated mechanical loud speakers or other sound amplification devices on trucks or other moving vehicles or in commercial establishments for the purpose of commercial advertising or attracting the attention of the public during the nighttime. The use of such at all other times shall be subject to the following conditions:

    a. The only sounds permitted are music or human speech.

    b. Sound shall not the issued or devices shall not be used within one hundred (100) yards of hospitals, schools, churches or courthouses.

    c. The human speech and music amplified shall not be obscene.

6. Operating or permitting to be operated any powered model aircraft in the outdoors during the nighttime. Any person desiring to use town parks or facilities to operate such aircraft at any time must first obtain permission from the town zoning administrator.

7. The playing of radio, phonographs, television, tape or disc players, musical instruments or drums, sound amplifiers or similar devices which produce, reproduce or amplify sound in such a manner as to create a noise-disturbance to emit sound audible at a distance of 50 feet outside of a building or audible through partitions common to two (2) or more residences within a building.

8. Talking, yelling, shouting, screaming, singing or any other form of human sounds produced by any person or group of people that creates a noise disturbance-between the hours of 10:00 p.m. and 6:00 a.m. in such a manner as to be audible across property boundaries or audible through partitions common to two (2) or more residences within a building.

9. Playing, operating or permitting to be operated, any radio, tape player, compact disc player, loud speaker or other electronic device used for the amplification of sound, which emits sound within a motor vehicle being operated or parked on a public street, alley, parking lot open to the public or public park and which emits sound audible from outside the motor vehicle at a distance of fifty (50) feet or more. The provisions of this subsection shall not apply to motor vehicle alarms or other security devices, the emission of sound for purposes of alerting persons to the existence of an emergency, or the emission of sound in performance of emergency work.

10. The sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm that continues for more than 15 minutes from activation, unless an emergency.

Sec. 26-64. Measurement procedures.

The measurement of sound or noise pursuant to this section shall be as follows:

(1) The measurement of sound or noise shall be made with sound level meters Type 1 or Type 2 which meet the standards prescribed by the ANSI. The instruments shall be maintained in calibration and good working order. A calibration shall be made of the system at the time of any noise measurement. Measurements recorded shall be taken so as to provide a proper representation of the noise source. The microphone during measurement shall be positioned so as not to create any unnatural enhancement or diminution of the measured noise. A windscreen for the microphone shall be used when required. A minimum of three (3) sound level readings will be taken. The geometric mean of these readings will be used as the average sound level. If the background noise is equal to the levels set forth in section 26-62 above, three (3) dB shall be subtracted out of the average sound level.

The slow meter response of the sound level meter shall be used to determine that the average amplitude has not exceeded the dBA readings or the limiting noise spectra set forth in section 26-62 above.

Unless otherwise specified, the measurement shall be made at the property boundary on which such noise is generated, or at any point within the receiving property affected by the noise.

Sec. 26-65. Exemptions from article.

Exemptions from the provisions of this chapter may be granted in accordance with the requirements below.

(1) Any person responsible for any noise from the operating of any equipment used in construction, repair, alteration or demolition work on building structures, alleys or appurtenances thereto shall apply to the director for an exemption or partial exemption from the provisions of this chapter. All other requests for exemptions shall be directed to the chief. The director or the chief may grant such exemption or partial exemption if he finds that:

a. The noise does not endanger the public health, safety or welfare; or

b. Compliance with the provisions of this chapter from which an exemption is sought would cause a serious hardship without producing equal of greater benefit to the public.

(2) In determining whether to grant such exemption the director or chief shall consider the following:

a. The time of day the noise will occur;

b. The duration of the noise;

c. The loudness of the noise in relation to the maximum permissible sound levels set forth in section 26-62 of this chapter;

d. Whether the noise is intermittent or continuous; and

e. Such other matters as are reasonably related to the impact of the noise on the health, safety and welfare of the community and the degree of hardship which may result from the enforcement of the provisions of this chapter.

(3) Exemptions or partial exemptions issued pursuant to this section shall be granted for such period as the director or the chief made pursuant to this section may obtain review of such decision by the town manager or his authorized agent by delivering a written statement of appeal to the office of the town manager within ten (10) days of the date of the decision. The town manager shall review all statements of grievances and shall, within ten (10) days after receipt of such written statement of grievance, either affirm or set such decision aside, and make any such further determination as may be necessary to effectuate the provisions of this section. The decision of the town manager shall be final and binding.

Sec. 26-66. Issuance of permits

The town manager shall be authorized to issue permits to persons allowing the production of noise that might otherwise be prohibited under this article, provided that such permits shall be limited to a specific event, time period, or activity. Such permits shall be issued in accordance with regulations promulgated by the town manager and published in the town administrative manual.

(Ord. No. O-2007, § 1, 12-4-2007)

Secs. 26-67—26-98. Reserved.