



**CITY OF POQUOSON**

**Office of the City Manager  
J. Randall Wheeler**

**500 City Hall Avenue, Poquoson, Virginia 23662-1996  
(757)868-3000 Fax (757)868-3101**

August 22, 2016

**To:** City Council  
**From:** City Manager  
**Subject:** **Noise Ordinance Amendment To Include Funeral Homes As A Sensitive Area**

Several times during the past year we have received complaints about the noise from barking dogs in close proximity to the funeral home which negatively impacts the services that are being conducted there. There are currently no provisions in the Noise Ordinance that can properly address the noise created by these barking dogs.

The ordinance presented for your consideration would add "funeral homes" to the listing of noise sensitive areas which would establish the maximum sound levels and measurement procedures to be used by the Police when a complaint is received (Sections 34-37(a) and (b)). A full copy of the Noise Ordinance is included with this item for your review.

JFW:ei

ORDINANCE NO. \_\_\_\_\_

**ORDINANCE AMENDING SECTION 34-39(5)  
OF THE NOISE ORDINANCE PERTAINING  
TO NOISE-SENSITIVE AREAS**

**BE IT RESOLVED** by the Council of the City of Poquoson, Virginia:

**Section 1:** That Section 34-39(5) of the Noise Ordinance of the City of Poquoson, Virginia is hereby revised to read as follows:

**CHAPTER 34**

**ARTICLE II  
NOISE**

**Section 34-39. Specific Prohibitions.**

(5) *Noise-sensitive areas.* For the purposes of this section, the maximum sound levels and measurement procedures as contained in Sections 34-37(a) and (b) shall apply to any school, place of worship, court, hospital, nursing home, funeral home or assisted-living facility while the same is being used as such, that interferes with the workings of the institution.

**Section 2:** That second reading of this ordinance is hereby dispensed with and the provisions contained herein shall become effective immediately upon adoption.

ADOPTED: \_\_\_\_\_

TESTE: \_\_\_\_\_

City Clerk

**ARTICLE I. IN GENERAL**

**Secs. 34-1—34-30. Reserved.**

**ARTICLE II. NOISE\*****Sec. 34-31. Findings; public policy.**

The city council hereby finds and declares that excessive sound is a serious hazard to the public health, welfare, peace and safety, and the quality of life; that a substantial body of science and technology exists by which excessive sound may be substantially abated; that the people have a right to and should be ensured an environment free from excessive sound that may jeopardize the public health, welfare, peace and safety, or degrade the quality of life; and that it is the policy of the city to prevent such excessive sound.

(Ord. No. 1373, § 1, 9-27-2010)

**Sec. 34-32. 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:

*A-weighted sound level* means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

*Background 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.

*Decibel (dB)* means a unit for measuring the volume of a sound, equal to 20 times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).

*Emergency* means any occurrence or set of circumstances involving actual or imminent physical injury or illness or property damage that requires immediate action.

*Emergency work* means any work performed for the purpose of preventing or alleviating the physical injury or illness or property damage threatened or caused by an emergency.

*Gross vehicle weight rating (GVWR)* means the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and

**\*Editor's note**—Ord. No. 1373, § 1, adopted September 27, 2010, repealed the former art. II, §§ 34-31—34-35, and enacted a new art. II as set out herein. The former art. II pertained to similar subject matter and derived from the Code of 1982, §§ 15-1—15-5.

**State law reference**—Applicability of noise ordinances to sports shooting ranges, Code of Virginia, § 15.2-917.

tractors are separable, the gross combination weight rating (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

*Instrument, machine or device* means and refers to any musical instrument, radio, phonograph, compact disc player, cassette tape player, MP3 player, amplifier or any other machine or device for producing, reproducing or amplification of sound.

*Motor carrier vehicle engaged in interstate commerce* means any vehicle for which regulations apply pursuant to Section 18 of the Federal Noise Control Act of 1972 (P.L. 92-574), as amended, pertaining to motor carriers engaged in interstate commerce.

*Motor vehicle* means any self-propelled device or device designed for self-propulsion, upon or by which any person or property is or may be drawn or transported upon a street or highway, except devices moved by human power or used exclusively upon stationary wheels or tracks.

*Motorcycle* means any motor vehicle designed to travel on not more than three wheels in contact with the ground and any four-wheeled vehicle weighing less than 500 pounds and equipped with an engine less than six horsepower, excepting farm tractors.

*Noise* means any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

*Public area* means any real property owned by the government, including, but not limited to, public rights-of-way, sidewalks, parks, and buildings.

*Residential dwelling* means any building or other structure in which one or more persons resides on a permanent or temporary basis, including, but not limited to, houses, apartments, condominiums, hotels and motels.

*Restaurant* means any building or structure where in the normal course of business, food or drink is available for eating on the premises, in consideration for payment. For purposes of this chapter, the term restaurant includes, but is not limited to, bars, lounges, taverns, coffee shops and cafes.

*Sound* means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

*Sound generation* means any conduct, activity or operation, whether human, animals, mechanical, electronic or other, and whether continuous, intermittent or sporadic, and whether stationary or ambulatory in nature, which produces or results in an audible sound.

*Sound level* means the weighted sound pressure level obtained by the use of a sound level meter and the A-frequency weighting network, as specified in American National Standards Institute specifications for sound level meters.

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*Sound level* means the weighted sound pressure level obtained by the use of a sound level meter and the A-frequency weighting network, as specified in American National Standards Institute specifications for sound level meters.

*Sound level meter* means an instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter and weighting networks used to measure sound pressure levels.

(Ord. No. 1373, § 1, 9-27-2010)

**Cross reference**—Definitions generally, § 1-2.

**Sec. 34-33. Administration and enforcement.**

The police department shall be responsible for enforcement of the noise control program established by this article and may be assisted by other city departments as required.

(Ord. No. 1373, § 1, 9-27-2010)

**Sec. 34-34. Violations.**

(a) Any person who violates any provision of this article shall be deemed to be guilty of a class 3 misdemeanor for a first offense. Any person who violates a provision of this article within one year after a previous conviction under this article shall be deemed guilty of a class 2 misdemeanor.

(b) The person operating or controlling a noise source shall be guilty of any violation caused by that source. If that cannot be determined, any owner, tenant, resident or manager physically present on the property where the violation is occurring is rebuttably presumed to be operating or controlling the noise source.

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

(Ord. No. 1373, § 1, 9-27-2010)

**Sec. 34-35. Exceptions.**

No provisions of this article shall apply to: (1) the emission of sound for the purpose of alerting persons to the existence of an emergency; (2) the emission of sound in the performance of emergency work; (3) activities sponsored by the city; (4) activities authorized by a permit issued by the city; or (5) activities for which the regulation of noise has been preempted by federal law.

(Ord. No. 1373, § 1, 9-27-2010)

**Sec. 34-36. Use of sound level meters.**

The decibel level of any noise regulated by this article shall be measured by a sound level meter. In order to implement and enforce this article effectively, the chief of police shall promulgate standards and procedures for using and testing sound level meters used in the enforcement of this article.

(Ord. No. 1373, § 1, 9-27-2010)

**Sec. 34-37. Maximum sound levels and residential dwellings.**

\* (a) *Nighttime.* No person shall permit, operate or cause any source of sound to create a sound level that can be heard in another person's residential dwelling during the hours between 10:00 p.m. and 7:00 a.m. in excess of 55 dBA when measured inside the residence at least four feet from the wall nearest the source, with the doors to the receiving area and windows closed.

\* (b) *Daytime.* No person shall permit, operate or cause any source of sound to create a sound level in another person's residential dwelling during the hours between 7:00 a.m. and 10:00 p.m. in excess of 65 dBA when measured inside the residence at least four feet from the wall nearest the source, with the doors to the receiving area and windows closed.

(c) *Measurements in multifamily dwellings or mixed use structures.* In a structure used as a multifamily dwelling or a mixed use structure, the police department may take measurements to determine sound levels from common areas within or outside the structure or from other dwelling units within the structure, when requested to do so by the residential occupant in possession and control thereof. Such measurement shall be taken at a point at least four feet from the wall, ceiling or floor nearest the noise source, with the doors to the receiving area and windows closed.

(d) *Exemptions.* The following activities or sources of noise shall be exempt from the daytime prohibition set forth in subsection (b) of this section:

- (1) Band performances or practices, athletic contests or practices, and other school sponsored activities on the grounds of public or private schools;
- (2) Athletic contests and other officially sanctioned activities in city parks or facilities;
- (3) Activities conducted in any gymnasium, theater, swimming pool, stadium, or similar sporting facility;
- (4) Activities related to the construction, repair, maintenance, remodeling or demolition, grading or other improvement of real property or furniture;
- (5) Gardening, lawn care, tree maintenance or removal, and other landscaping activities;
- (6) Agricultural activities;
- (7) Church bells, carillons, or calls to worship by other sound-producing devices;
- (8) Religious or political gatherings to the extent that those activities are protected by the First Amendment to the United States Constitution;
- (9) Public transportation, refuse collection, and sanitation services;
- (10) Bona fide agricultural activity.

(Ord. No. 1373, § 1, 9-27-2010)

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\* (b) *Daytime.* No person shall permit, operate or cause any source of sound to create a sound level in another person's residential dwelling during the hours between 7:00 a.m. and 10:00 p.m. in excess of 65 dBA when measured inside the residence at least four feet from the wall nearest the source, with the doors to the receiving area and windows closed.

(c) *Measurements in multifamily dwellings or mixed use structures.* In a structure used as a multifamily dwelling or a mixed use structure, the police department may take measurements to determine sound levels from common areas within or outside the structure or from other dwelling units within the structure, when requested to do so by the residential occupant in possession and control thereof. Such measurement shall be taken at a point at least four feet from the wall, ceiling or floor nearest the noise source, with the doors to the receiving area and windows closed.

(d) *Exemptions.* The following activities or sources of noise shall be exempt from the daytime prohibition set forth in subsection (b) of this section:

- (1) Band performances or practices, athletic contests or practices, and other school sponsored activities on the grounds of public or private schools;
  - (2) Athletic contests and other officially sanctioned activities in city parks or facilities;
  - (3) Activities conducted in any gymnasium, theater, swimming pool, stadium, or similar sporting facility;
  - (4) Activities related to the construction, repair, maintenance, remodeling or demolition, grading or other improvement of real property or furniture;
  - (5) Gardening, lawn care, tree maintenance or removal, and other landscaping activities;
  - (6) Agricultural activities;
  - (7) Church bells, carillons, or calls to worship by other sound-producing devices;
  - (8) Religious or political gatherings to the extent that those activities are protected by the First Amendment to the United States Constitution;
  - (9) Public transportation, refuse collection, and sanitation services;
  - (10) Bona fide agricultural activity.
- (Ord. No. 1373, § 1, 9-27-2010)

**Sec. 34-38. Motor vehicle maximum sound levels; amplified sound from vehicles.**

(a) No person shall operate or cause to be operated a public or private motor vehicle or motorcycle on a public right-of-way at any time in such manner that the sound level emitted by the motor vehicle or motorcycle, when measured at a distance of 50 feet or more, exceeds the level set forth in the following table:

Vehicle Class	Sound level in dBA	
	Speed limit in 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.

(c) Notwithstanding any other provisions of this section or article, it shall be unlawful for any person to play or operate, or permit the playing, use or operation of any radio, cassette tape player, compact disc player, MP3 player, loud speaker or other electronic device used for the amplification of sound, which is located within a motor vehicle being operated or parked on public or private property within the city, including any public or private street or alley, in excess of 55 dBA as measured at a distance of 100 feet or more from the vehicle in which it is located.

The provisions of this subsection shall not apply to any motor vehicles driven in a duly authorized parade, nor to motor vehicle alarms or other security devices, nor to the emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work.

(Ord. No. 1373, § 1, 9-27-2010)

**Sec. 34-39. Specific prohibitions.**

The following acts are declared to be violations of this article. This enumeration shall not be construed to limit, in any way, the general prohibitions contained in chapter 34:

- (1) *Horns, signaling devices and similar devices.* Sounding any horn signaling device, or similar device on any automobile, motorcycle, boat, or other vehicle on any right-of-way in a public space or in any public space continuously or intermittently for more than ten consecutive seconds, except when the sounding of any such device is intended as a danger warning.
- (2) *Non-emergency signaling devices.* Sounding or permitting the sounding of any amplified signal continuously or intermittently from any bell, chime, siren, whistle or

similar device intended primarily for non-emergency purposes from any one location for more than ten consecutive seconds in any hourly period; provided, however, that this subsection shall not apply to the sounding of such devices by religious uses or by public bodies or agencies for testing, traffic control or other public purposes.

- (3) *Emergency signaling devices, security, burglar and fire alarms, etc.* Sounding or permitting the continuous or intermittent sounding outdoors of any emergency signaling device, or any security, burglar or fire alarm, siren, whistle, or similar device, including without limitation any motor vehicle security alarm, siren, whistle, or similar device, for a period in excess of ten minutes in any residential area and 15 minutes in any other area, except in response to a burglary, attempted burglary, fire, or other emergency.
  - (4) *Audio and audio-visual devices, musical instruments, etc.* The playing of any television, boom box, stereo, phonograph, radio, cassette tape player, compact disc player, MP3 player, video player, musical instrument, drum, or any other device that produces, reproduces or amplifies sound, including any such device in a motor vehicle, where the sound is plainly audible to any person other than the player(s) or operator(s) of the device and those who are voluntarily listening to the sound and exceeds 55 dBA as measured at a distance of 100 feet or more from the source of the sound; provided, however, that the provisions of this subsection shall not apply to any outdoor performance, parade, gathering, dance, concert, show, sporting event, or other event sponsored by the city or for which the city has granted a permit.
  - (5) *Noise-sensitive areas.* For the purposes of this section, the maximum sound levels and measurement procedures as contained in sections 34-37(a) and (b) shall apply to any school, place of worship, court, hospital, nursing home, or assisted-living facility while the same is being used as such, that interferes with the workings of the institution.
  - (6) *Construction equipment.* The operation of any bulldozer, crane, backhoe, front loader, pile driver, jackhammer, pneumatic drill, or other construction equipment between the hours of 9:00 p.m. and 7:00 a.m. except when operated in the course of emergency work or as authorized by the city manager.
  - (7) *Electric generators.* The operation of any electric generator between the hours of 9:00 p.m. and 7:00 a.m. except when operated in the course of an emergency, as declared by the city manager, or as otherwise authorized by the city manager.
- (Ord. No. 1373, § 1, 9-27-2010)

**Sec. 34-40. Sound levels; restaurants.**

No person shall permit, operate or cause any source of sound to create a sound level emanating from a restaurant during the hours between 12:00 a.m. and 7:00 a.m.: (1) in excess of 75 dBA when measured from any public area, including, but not limited to, adjacent streets

similar device intended primarily for non-emergency purposes from any one location for more than ten consecutive seconds in any hourly period; provided, however, that this subsection shall not apply to the sounding of such devices by religious uses or by public bodies or agencies for testing, traffic control or other public purposes.

- (3) *Emergency signaling devices, security, burglar and fire alarms, etc.* Sounding or permitting the continuous or intermittent sounding outdoors of any emergency signaling device, or any security, burglar or fire alarm, siren, whistle, or similar device, including without limitation any motor vehicle security alarm, siren, whistle, or similar device, for a period in excess of ten minutes in any residential area and 15 minutes in any other area, except in response to a burglary, attempted burglary, fire, or other emergency.
  - (4) *Audio and audio-visual devices, musical instruments, etc.* The playing of any television, boom box, stereo, phonograph, radio, cassette tape player, compact disc player, MP3 player, video player, musical instrument, drum, or any other device that produces, reproduces or amplifies sound, including any such device in a motor vehicle, where the sound is plainly audible to any person other than the player(s) or operator(s) of the device and those who are voluntarily listening to the sound and exceeds 55 dBA as measured at a distance of 100 feet or more from the source of the sound; provided, however, that the provisions of this subsection shall not apply to any outdoor performance, parade, gathering, dance, concert, show, sporting event, or other event sponsored by the city or for which the city has granted a permit.
  - (5) *Noise-sensitive areas.* For the purposes of this section, the maximum sound levels and measurement procedures as contained in sections 34-37(a) and (b) shall apply to any school, place of worship, court, hospital, nursing home, or assisted-living facility while the same is being used as such, that interferes with the workings of the institution.
  - (6) *Construction equipment.* The operation of any bulldozer, crane, backhoe, front loader, pile driver, jackhammer, pneumatic drill, or other construction equipment between the hours of 9:00 p.m. and 7:00 a.m. except when operated in the course of emergency work or as authorized by the city manager.
  - (7) *Electric generators.* The operation of any electric generator between the hours of 9:00 p.m. and 7:00 a.m. except when operated in the course of an emergency, as declared by the city manager, or as otherwise authorized by the city manager.
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#### **Sec. 34-40. Sound levels; restaurants.**

No person shall permit, operate or cause any source of sound to create a sound level emanating from a restaurant during the hours between 12:00 a.m. and 7:00 a.m.: (1) in excess of 75 dBA when measured from any public area, including, but not limited to, adjacent streets

or sidewalks; or (2) that exceeds 55 dBA when measured inside from any property other than the property on which the restaurant is located at least four feet from the wall nearest the source with the doors and windows to the receiving area closed.

(Ord. No. 1373, § 1, 9-27-2010)

**Sec. 34-41. Severability.**

A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section or part of this article shall not affect the validity of the remaining parts thereto.

(Ord. No. 1373, § 1, 9-27-2010)

**Secs. 34-42—34-70. Reserved.**

**ARTICLE III. EROSION AND SEDIMENT CONTROL**

**Sec. 34-71. Title, purpose, and authority.**

(a) This article shall be known as the "Erosion and Sediment Control Law of the City of Poquoson, Virginia." The purpose of this article is to conserve the land, water, air and other natural resources of the city by establishing requirements for the control of erosion and sedimentation, and by establishing procedures whereby these requirements shall be administered and enforced.

(b) The findings of the general assembly of the commonwealth, as set forth in Code of Virginia, § 62.1-44.15:51 et seq., as amended, are adopted as the findings of the city council with regard to adoption of this article.

(Code 1982, § 9-1; Ord. No. 1120, § 2(9-1), 11-13-2001; Ord. No. 1496, § 1, 6-23-2014)

**Sec. 34-72. 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:

*Agreement in lieu of a plan* means a contract between the plan-approving authority and the owner, which specifies conservation measures, which must be implemented in the construction of a single-family residence. This contract may be executed by the plan-approving authority in lieu of a formal site plan.

*Applicant* means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land disturbing activities to commence.

*Board* means the state water control board.

*Certified inspector* means an employee or agent of a program authority who holds a certificate of competence from the board in the area of project inspection or is enrolled in the board's training program for project inspection and successfully completes such program within one year after enrollment.

*Certified plan reviewer* means an employee or agent of a program authority who holds a certificate of competence from the board in the area of plan review, is enrolled in the board's training program for plan review and successfully completes such program within one year after enrollment, or is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Code of Virginia, § 54.1-400 et seq.

*Certified program administrator* means an employee or agent of a program authority who holds a certificate of competence from the board in the area of program administration or is enrolled in the board's training program for program administration and successfully completes such program within one year after enrollment.

*Clearing* means any activity which removes the vegetative ground cover including, but not limited to, root mat removal or topsoil removal.

*Conservation plan, erosion and sediment control plan or plan* means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory, and management information with needed interpretations and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

*Department* means the department of environmental quality.

*Development* means a tract of land developed or to be developed as a single unit under single ownership or unified control, which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

*Director* means the director of the department.

*Erosion impact area* means an area of land not associated with current land disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 2,500 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

*Excavating* means any digging, scooping or other methods of removing earth materials.

*Filling* means any depositing or stockpiling of earth materials.

*Grading* means any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

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