

NOISE

Chapter 63.2**NOISE**

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[HISTORY: Chapter 63 was adopted by the Council of the Town of Middleburg on 7-12-84. It was repealed in its entirety on 3-26-09; and, Chapter 63.1 was adopted in its stead. It was repealed in its entirety on 08-22-13 and Chapter 63.2 was adopted in its stead. Section 63.2-8 amended 2-11-2021]

63.2-1 Declaration of Findings and Policy

The Middleburg Town Council hereby finds and declares that excessive sound is a serious hazard to the public health, welfare, peace, safety and the quality of life. Citizens, business owners, and visitors 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. It is the policy of the Town to prevent such excessive sound to the extent such action is not inconsistent with a citizen's First Amendment rights.

63.2-2 Definitions

The following words, terms and phrases used in this Chapter shall have the meanings ascribed to them in this Chapter, 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.

Audible and discernible means the sound can be heard by the human ear, and the sound is sufficiently distinct such that its source can be clearly identified.

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Background noise level means 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 twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micropascals (twenty (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.

Fowl means a bird of any kind, including but not limited to a cock or hen of the domestic chicken.

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 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, amplifier or any other machine or device for producing, reproducing or amplifying 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.

Motorcycle means any motor vehicle designed to travel on not more than three (3) wheels in contact with the ground and any four-wheeled vehicle weighing less than five hundred (500) pounds and equipped with an engine of less than six (6) horsepower, excepting farm tractors.

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.

Noise means any audible sound which disturbs or tends to disturb 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.

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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, 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.

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.

63.2-3 Administration and Enforcement

- A. The Middleburg Police Department may issue a summons for enforcement of the noise ordinance established by this Chapter and may be assisted by other Town departments as necessary.
- B. Nothing in this Chapter shall preclude a private citizen from obtaining a magistrate's summons based upon a probable cause determination by the magistrate's office.

63.2-4 Exceptions

No provisions of this Chapter 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 Town; (4) activities authorized by a permit issued by the Town; or (5) activities for which the regulation of noise has been preempted by federal law.

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63.2-5 Use of sound level meters

The decibel level of any noise regulated on a decibel basis by this Chapter shall be measured by a sound level meter. The test results shall be prima facie evidence if administered in accordance with Code of Virginia § 19.2-270.7.

63.2-6 Maximum Sound Levels and Residential Dwellings

1. **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 9:00 p.m. and 7:00 a.m. Sunday through Thursday and during the hours between 10:00 p.m. and 7:00 a.m. Friday and Saturday in excess of 55 dBA when measured inside the residence at least four (4) feet from the wall nearest the source, with doors and windows to the receiving area closed.
2. **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 9:00 p.m. Sunday through Thursday and during the hours between 7:00 a.m. and 10:00 p.m. Friday and Saturday in excess of 65 dBA when measured inside the residence at least four (4) feet from the wall nearest the source, with doors and windows to the receiving area closed.
3. **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 indoor common areas or other dwelling units within the structure, when requested to do so by a residential occupant in possession and control thereof. Such measurement shall be taken at a point at least four (4) feet from the wall, ceiling or floor nearest the noise source, with doors and windows to the receiving area closed.
4. **Exemptions.** The following activities or sources of noise shall be exempt from the daytime prohibition set forth in subsection (2) of this section:
 - a. Parades, fireworks displays, school related activities and other such public special events or public activities.
 - b. Activities on or in municipal, county, state, United States or school athletic facilities or on or in publicly owned property and facilities.
 - c. Activities related to the construction, repair, maintenance, remodeling or demolition, grading or other improvement of real property provided the construction begins no earlier than 7:00 a.m. and is concluded no later than 9:00 p.m. Monday through Saturday and no earlier than 8:00 a.m. and is concluded no later than 9:00 p.m. Sunday.

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- d. Gardening, lawn care, tree maintenance or removal, and other landscaping activities provided the activity begins no earlier than 7:00 a.m. and is concluded no later than 9:00 p.m. Monday through Saturday and which begins no earlier than 8:00 a.m. and is concluded no later than 900 p.m. on Sunday.
- e. Agricultural activities provided the activity begins no earlier than 7:00 a.m. and is concluded no later than 10:00 p.m.
- f. Religious services, religious events or religious activities or expressions, including, but not limited to, music, singing, church bells, carillons, chimes or organs or calls to worship by other sound-producing devices.
- g. Political gatherings to the extent that those activities are protected by the First Amendment to the United States Constitution.
- h. Military activities of the Commonwealth of Virginia or the United States of America.
- i. Lawful discharge of fire arms.
- j. The pick-up and/or collection of garbage, trash or recycling materials by specifically designated and contract companies working for the Town of Middleburg.
- k. Any designated person or company, as specifically permitted by the Town, contracted or engaged in work on behalf of the Town of Middleburg.

63.2-7 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 or private right-of-way at any time in such a manner that the sound level emitted by the operation of the motor vehicle or motorcycle, when measured at a distance of one-hundred (100) feet or more is audible and discernible or exceeds the level set forth in the following table:

Vehicle Class	35 MPH zone or less	Greater than 35 MPH
All motor vehicles of GVWR or GCWR of 6,000 lbs. or more	86 DBA	90 DBA
Any Motorcycle	82	86
Any other vehicle or combination of vehicle in tow	76	86

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This Section shall not apply to any motor carrier vehicle engaged in interstate commerce.

- B. Notwithstanding any other provisions of this Chapter, it shall be unlawful for any person to play or operate, or permit the playing, use or operation of, any radio, tape player, compact disc 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 Town, including any public or private street or alley, in such a manner as to be audible and discernible at a distance of one hundred (100) or more feet from the vehicle in which it is located.
- C. The provisions of this subsection shall not apply to 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.

63.2-8 Specific Prohibitions

- A. The following acts are declared to be violations of this article:
 - a. Vehicle horns, signaling devices and similar devices. Sounding any horn, signaling device, or similar device on any automobile, motorcycle or other vehicle on any right-of-way or in any public space continuously or intermittently for more than ten (10) consecutive seconds, except when the sounding of any such device is intended as a danger warning.
 - b. Nonemergency 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 nonemergency purposes from any one location for more than ten (10) 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.
 - c. 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 (10) minutes in any residential area and fifteen (15) minutes in any other area, except in response to a burglary, attempted burglary, fire, or other emergency.
 - d. Audio and audio-visual devices, musical instruments, amplified sound etc., excluding those in motor vehicles. The playing or operation of any television, stereo, phonograph, radio, tape player, compact disc player, MP3 player, video player, musical instrument, drum, amplifier or any other device that

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produces, reproduces or amplifies sound except for those located in motor vehicles, where the sound, when measured in any public area including but not limited to any public street or sidewalk, or from other private property between the hours of 7:00 a.m. and 10:00 p.m. Monday through Saturday and between the hours of 8:00 a.m. and 10:00 p.m. Sunday exceeds sixty-five (65) dB(A), or between the hours of 10:00 p.m. and 7:00 a.m. Monday through Saturday and between the hours of 10:00 p.m. and 8:00 a.m. Sunday exceeds fifty-five (55) dB(A); 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 Town or for which the Town has granted a permit.

- e. Noise-sensitive areas. The making of any unreasonably loud and raucous noise within two hundred (200) feet of any school, place of worship, court, hospital, nursing home or assisted-living facility while the same is being used as such, that substantially interferes with the workings of the institution.
- f. 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. Monday through Saturday and between the hours of 9:00 p.m. and 8:00 a.m. Sunday except as provided in Section 63.2-6(4)(c), or as specifically deemed necessary and authorized by a written document issued by the Town Administrator or his/her designee. [Added 2-11-2021]
- g. Construction Activity During Certain Holidays. Any type of construction activity that requires the issuance of a building permit by the Loudoun County Building & Development Department on any of the following holidays: New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day or Christmas Day, unless the construction activity is occurring completely within an enclosed structure and does not produce noise in excess of 50 dBA when measured at the property line.
- h. Animals. The owning, keeping or possessing of any animal or animals or fowl which frequently or habitually howl, bark, meow or squawk in such a manner as to permit sound to be heard across a residential real property boundary or through partitions common to two (2) dwelling units within a building which creates noise disturbance. This subsection shall not apply to any bona fide agricultural activity.
- i. Large party public nuisance. A gathering of ten (10) or more people where the gathering is not contained within a structure, but spills outdoors into balconies, yards, common areas, parking lots or other outdoor spaces, which creates disturbance between the hours of 9:00 p.m. and 7:00 a.m. Sunday through Thursday and between the hours of 10:00 p.m. and 7:00 a.m. Friday and Saturday.

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- j. Commercial vehicle and trash collection vehicle operation. The operation of a commercial vehicle or trash collection vehicle, other than those that are specifically contracted with the Town of Middleburg, within one hundred (100) yards of a residence, between the hours of 9:00 p.m. and 7:00 a.m. Sunday through Thursday and between the hours of 10:00 p.m. and 7:00 a.m. Friday and Saturday, in such a manner as to create a noise disturbance.

63.2-9 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 7:00 a.m. and 11:00 p.m. in excess of eighty (80) dB(A), or between 11:00 p.m. and 7:00 a.m. in excess of seventy-five (75) dB(A) when measured from any public area including, but not limited to, any public streets or sidewalks, or other private property.

63.2-10 Penalties

- (A) Civil violation. 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 as follows:
 - (1) The first violation of this Chapter by such person shall be punished by a civil penalty in the amount of \$250.
 - (2) The second violation of this Chapter committed by such person within seven days of the first violation shall be punished by a civil penalty in the amount of \$350.
 - (3) The third and any subsequent violation of this Chapter committed by such person within 14 days of the first violation shall be punished by a civil penalty in the amount of \$500.
- (B) Criminal violation. Any person who knowingly refuses or neglects to comply with any written order to cease or abate or any summons for failing to cease and or abate any violation of this Chapter, issued by an authorized enforcement officer within the same twenty-four hour period, shall be guilty of a class 2 misdemeanor.
- (C) Each subsequent offense within the same twenty-four hour period shall constitute a separate offense under this Chapter.
- (D) Procedures.
 - (1) If an authorized enforcement officer determines that a violation of this Chapter has occurred, the officer may cause a notice of the violation to be served on any or all persons committing, permitting, assisting in or attempting such violation.

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- (2) The notice shall provide that the person charged with a violation may elect to make an appearance in person, or in writing by mail, to the Town Treasurer, and admit liability for or plead no contest to the violation, abate the violation, and pay the civil penalty established for the violation, all within the time period fixed in the notice.
- (3) If a person charged with a violation does not elect to admit liability or plead no contest, and abate the violation, the violation shall be tried in the Loudoun County General District Court upon a warrant in debt or motion for judgment, with the same right of appeal as provided for civil actions at law. In the event the violation exceeds the jurisdictional limits of the General District Court, the violation shall be tried in the Loudoun County Circuit Court.
- (4) A finding of admission of liability or a plea of no contest to a civil violation shall not be deemed a criminal violation for any purpose.

63.2-11 Severability

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