

Virginia

Noise Related Statutes and Policies

§ 5.1-157. Authority rules and regulations; penalty.

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E. The violation of any rule or regulation of the Authority establishing a **noise** limitation on aircraft that operate at the Authority Facilities shall subject the violator, in the discretion of the circuit court of any political subdivision where the facility is located, to a civil penalty not to exceed \$5,000 for each violation. Such penalty shall be paid to the Authority. With the consent of the violator or the accused violator of a rule establishing aircraft **noise** limits, the Authority may provide, in an order issued against the violator or accused violator, for the payment of civil charges in specific sums not to exceed the limit that could be imposed by the court. Such civil charge when paid shall be in lieu of any civil penalty which could be imposed by the court. Any court proceeding shall be within the exclusive jurisdiction of the circuit court and shall be a civil proceeding at law brought by the Authority.

§ 15.2-917. Applicability of local noise ordinances to certain sport shooting ranges.

A. No local ordinance regulating any noise shall subject a sport shooting range to noise control standards more stringent than those in effect at its effective date. The operation or use of a sport shooting range shall not be enjoined on the basis of noise, nor shall any person be subject to action for nuisance or criminal prosecution in any matter relating to noise resulting from the operation of the range, if the range is in compliance with all ordinances relating to noise in effect at the time construction or operation of the range was approved, or at the time any application was submitted for the construction or operation of the range.

B. Any sport shooting range operating or approved for construction within the Commonwealth, which has been condemned through an eminent domain proceeding by any condemning entity, and which relocates to another site within the same locality within two years of the final condemnation order, shall not be subjected to any noise control standard more stringent than those in effect at the effective date of such sport shooting range.

C. For purposes of this section, "sport shooting range" means an area or structure designed for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting.

For purposes of this section, "effective date" means the time the construction or operation of the sports shooting range initially was approved, or at the time any application was submitted for the construction or operation of the sports shooting range, whichever is earliest.

§ 15.2-919. Regulation of motorcycle, moped, or motorized skateboard or scooter noise.

Any locality may, by ordinance, regulate noise from a motorcycle, moped, or motorized skateboard or scooter, as defined in § 46.2-100, which is not equipped with a **muffler** and exhaust system conforming to §§ 46.2-1047 and 46.2-1049, if such **noise** may be hazardous to the health and well-being of its citizens.

§ 15.2-980. Civil penalties for violations of noise ordinances.

Any locality may, by ordinance, adopt a uniform schedule of civil penalties for violations of that locality's **noise** ordinance. This provision shall not apply to **noise** generated in connection with

the business being performed on industrial property. Civil fines will not exceed \$250 for the first offense and \$500 for each subsequent offense. The provisions of this section shall not apply to railroads. No ordinance of any locality shall apply to sound emanating from any area permitted by the Virginia Department of Mines, Minerals and Energy or any division thereof.

§ 15.2-1220. Regulation by certain counties of persons and vehicles.

The Counties of Franklin, Pulaski, and York may by ordinance impose reasonable regulations to provide for the comfort, safety and health of the general public and persons assembled, or traveling to assemble, for any outdoor occasion.

Such regulations may cover the following:

- (i) hours of operation,
- (ii) sanitary facility requirements,
- (iii) security personnel requirements, and
- (iv) maximum **noise** levels.

§ 15.2-2288.01. Localities shall not require a special use permit for certain small-scale conversion of biomass to alternative fuel.

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B. A zoning ordinance shall not require that a special exception or special use permit be obtained for the small-scale conversion of biomass if: (i) at least 50 percent of the feedstock is produced either on site or by the owner of the conversion equipment; (ii) any structure used for the processing of the feedstock into energy occupies less than 4,000 square feet, not including the space required for storage of feedstock; and (iii) the owner of the farm notifies the administrative head of the locality in which the processing occurs. Localities may adopt reasonable requirements for setback, minimum lot area, and restrictions on the hours of operation and maximum **noise** levels applicable to the small-scale conversion of biomass. No setback, lot area, hours of operation or noise requirements may be more restrictive than similar provisions for other agricultural structures or activities.

§ 15.2-2288.3. Licensed farm wineries; local regulation of certain activities.

A. It is the policy of the Commonwealth to preserve the economic vitality of the Virginia wine industry while maintaining appropriate land use authority to protect the health, safety, and welfare of the citizens of the Commonwealth, and to permit the reasonable expectation of uses in specific zoning categories. Local restriction upon such activities and events of farm wineries licensed in accordance with Title 4.1 to market and sell their products shall be reasonable and shall take into account the economic impact on the farm winery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for farm wineries throughout the Commonwealth. Usual and customary activities and events at farm wineries shall be permitted without local regulation unless there is a substantial impact on the health, safety, or welfare of the public. No local ordinance regulating **noise**, other than outdoor **amplified music**, arising from activities and events at farm wineries shall be more restrictive than that in the general **noise** ordinance. In authorizing outdoor amplified music at a farm winery, the locality shall consider the effect on adjacent property owners and nearby residents.

15.2-2295. Aircraft noise attenuation features in buildings and structures within airport noise zones.

Any locality in whose jurisdiction, or adjacent jurisdiction, is located a licensed airport or United States government or military air facility, may enforce building regulations relating to the provision or installation of acoustical treatment measures in residential buildings and structures, or portions thereof, other than farm structures, for which building permits are issued after January 1, 2003, in areas affected by above average **noise** levels from aircraft due to their proximity to flight operations at nearby airports. Any locality in whose jurisdiction a United States Master Jet Base is located or any adjacent locality may, in addition, adopt and enforce building regulations relating to the provision or installation of acoustical treatment measures applicable to buildings and structures, or portions thereof, in Assembly, Business, Educational, Institutional, and Mercantile groups, as defined in the International Building Code.

In establishing the regulations, the locality may adopt one or more noise overlay zones as an amendment to its zoning map and may establish different measures to be provided or installed within each zone, taking into account the severity of the impact of aircraft noise upon buildings and structures within each zone. Any such regulations or amendments to a zoning map shall provide a process for reasonable notice to affected property owners. Any regulations or amendments to a zoning map shall be adopted in accordance with this chapter. A statement shall be placed on all recorded surveys, subdivision plats and all final site plans approved after January 1, 2003, giving notice that a parcel of real property either partially or wholly lies within an airport **noise** overlay zone. No existing use of property which is affected by the adoption of such regulations or amendments to a zoning map shall be considered a nonconforming use solely because of the regulations or amendments. The provisions of this section shall not affect any local aircraft noise attenuation regulations or ordinances adopted prior to the effective date of this act, and such regulations and ordinances may be amended provided the amendments shall not alter building materials, construction methods, plan submission requirements or inspection practices specified in the Virginia Uniform Statewide Building Code.

§ 15.2-4901. Purpose of chapter.

It is the intent of the legislature by the passage of this chapter to authorize the creation of industrial development authorities by the localities in the Commonwealth so that such authorities may acquire, own, lease, and dispose of properties and make loans to the end that such authorities may be able to promote industry and develop trade by inducing manufacturing, industrial, governmental, nonprofit and commercial enterprises and institutions of higher education to locate in or remain in the Commonwealth and further the use of its agricultural products and natural resources, and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth, either through the increase of their commerce, or through the promotion of their safety, health, welfare, convenience or prosperity. Such authority shall not itself be authorized to operate any such manufacturing, industrial, nonprofit or commercial enterprise or any facility of an institution of higher education.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to pollution control facilities to the end that such authorities may protect and promote the health of the inhabitants of the Commonwealth and the conservation, protection and improvement of its natural resources by exercising such powers for the control or abatement of land, sewer, water, air, **noise** and general

environmental pollution derived from the operation of any industrial or medical facility and to vest such authorities with all powers that may be necessary to enable them to accomplish such purpose, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth, either through the increase of their commerce, or through the promotion of their safety, health, welfare, convenience or prosperity.

§ 19.2-270.7. Determining decibel level of sound with proper equipment; certificate as to accuracy of equipment.

A law-enforcement officer may use equipment deemed proper pursuant to subsection C of § 2.2-1112 to determine the decibel level of any sound, including **noise**. The results of such determinations shall be accepted as prima facie evidence of the decibel level of the sound in any court or legal proceeding where the decibel level of the sound is at issue.

In any court or legal proceeding in which any question arises about the calibration or accuracy of such equipment used to determine the decibel level of sound, a certificate, or a true copy thereof, showing the calibration or testing for accuracy of the equipment, and when and by whom the calibration or test was made, shall be admissible as evidence of the facts therein stated. No calibration or testing of such equipment shall be valid for longer than 12 months.

§ 29.1-737. Muffling devices.

The exhaust of every internal combustion engine used on any motorboat shall be effectively muffled by equipment so constructed and used as to muffle the **noise** of the exhaust in a reasonable manner. The muffling device shall exhaust at or below the water line or it shall be equipped with mechanical baffles. The use of cutouts is prohibited, except as approved by the Department or the U.S. Coast Guard.

§ 33.1-223.2:21. Noise abatement practices and technologies.

Whenever the Commonwealth Transportation Board or the Department plan for or undertake any highway construction or improvement project and such project includes or may include the requirement for the mitigation of traffic noise impacts, consideration should be given to the use of noise reducing design and low noise pavement materials and techniques in lieu of construction of noise walls or sound barriers. Landscaping in such a design would be utilized to act as a visual screen if visual screening is required.

§ 33.1-252.1. Noise abatement measures.

No local matching funds shall be required in connection with the construction of any **noise** abatement measures in connection with a facility, connecting two cities with a combined population between 625,000 and 675,000 as determined by the most recent census, whose construction, operation, or maintenance is or is to be funded, in whole or in part, through tolls collected for use of that facility. All costs of construction and maintenance of any and all such noise abatement measures shall be paid from tolls collected for the use of the facility.

§ 36-99.10:1. Standards for installation of acoustical treatment measures in certain buildings and structures.

The Board of Housing and Community Development shall promulgate regulations by October 1, 1994, for installation of acoustical treatment measures for construction in areas affected by above average **noise** levels from aircraft due to their proximity to flight operations at nearby airports.

Such regulations shall provide for implementation at the option of a local governing body pursuant to the provisions of § 15.2-2295.

§ 45.1-161.270. Safety measures on equipment.

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F. An **audible** warning device and headlights shall be provided on all self-propelled mobile equipment.

G. An automatic backup **alarm**, that is audible above surrounding **noise** levels, shall be provided on all mobile equipment. An automatic reverse-activated strobe light may be substituted for an audible alarm when mobile equipment is operated at night.

§ 46.2-1049. Exhaust system in good working order.

No person shall drive and no owner of a vehicle shall permit or allow the operation of any such vehicle on a highway unless it is equipped with an exhaust system in good working order and in constant operation to prevent excessive or unusual levels of **noise**; provided however, that for motor vehicles, such exhaust system shall be of a type installed as standard factory equipment, or comparable to that designed for use on the particular vehicle as standard factory equipment. An exhaust system shall not be deemed to prevent excessive or unusual noise if it permits the escape of noise in excess of that permitted by the standard factory equipment exhaust system of private passenger motor vehicles or trucks of standard make.

The term "exhaust system," as used in this section, means all the parts of a vehicle through which the exhaust passes after leaving the engine block, including **mufflers** and other **sound** dissipative devices.

Chambered pipes are not an effective muffling device to prevent excessive or unusual **noise**, and any vehicle equipped with chambered pipes shall be deemed in violation of this section.

§ 46.2-1051. Certain local governments may impose restrictions on operations of certain vehicles.

The governing body of any county, city, or town which is located within the Northern Virginia Planning District may provide by ordinance that no person shall operate and no owner shall permit the operation of, either on a highway or on public or private property within 500 feet of any residential district, any motorcycle, moped, all-terrain vehicle as defined in § 46.2-100, not being used for agriculture or silviculture production as defined in § 3.2-300, electric power-assisted bicycle, motorcycle-like device commonly known as a trail-bike or mini-bike, off-road motorcycle, or motorized cart commonly known as a go-cart unless it is equipped with an exhaust system of a type installed as standard equipment, or comparable to that designed for use on that particular vehicle or device as standard factory equipment, in good working order and in constant operation to prevent excessive **noise**.

§ 55-248.12:1. Required disclosures for properties located adjacent to a military air installation; remedy for nondisclosure.

A. Notwithstanding the provisions of subdivision A 10 of § 55-248.5, the landlord of property in any locality in which a military air installation is located, or any person authorized to enter into a rental agreement on his behalf, shall provide to a prospective tenant a written disclosure that the property is located in a **noise** zone or accident potential zone, or both, as designated by the locality on its official zoning map. Such disclosure shall be provided prior to the execution by

the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant. The disclosure shall specify the **noise** zone or accident potential zone in which the property is located according to the official zoning map of the locality. A disclosure made pursuant to this section containing inaccurate information regarding the location of the **noise** zone or accident potential zone shall be deemed as nondisclosure unless the inaccurate information is provided by an officer or employee of the locality in which the property is located.

§ 55-520. Time for disclosure; termination of contract.

A. The owner of residential real property subject to this chapter shall deliver to the purchaser the written disclosure statement required by this chapter prior to the acceptance of a real estate purchase contract or otherwise be subject to the provisions of subsection B of this section. For the purposes of this chapter, "acceptance" means the full execution of a real estate purchase contract by all parties. The residential property disclosure statement may be included in the real estate purchase contract, in an addendum thereto, or in a separate document.

B. If the disclosure statement required by this chapter is delivered to the purchaser after the acceptance of the real estate purchase contract, the purchaser's sole remedy shall be to terminate the real estate purchase contract at or prior to the earliest of (i) three days after delivery of the disclosure statement in person; (ii) five days after the postmark if the disclosure statement is deposited in the United States mail, postage prepaid, and properly addressed to the purchaser; (iii) settlement upon purchase of the property; (iv) occupancy of the property by the purchaser; (v) the purchaser making written application to a lender for a mortgage loan where such application contains a disclosure that the right of termination shall end upon the application for the mortgage loan; or (vi) the execution by the purchaser after receiving the disclosure statement required by this chapter of a written waiver of the purchaser's right of termination under this chapter contained in a writing separate from the real estate purchase contract. In order to terminate a real estate purchase contract when permitted by this chapter, the purchaser must, within the times required by this chapter, give written notice to the owner either by hand delivery or by United States mail, postage prepaid, and properly addressed to the owner. If the purchaser terminates a real estate purchase contract in compliance with this chapter, the termination shall be without penalty to the purchaser, and any deposit shall be promptly returned to the purchaser.

C. Notwithstanding the provisions of subsection B of § 55-524, no purchaser of residential real property located in a **noise** zone designated on the official zoning map of the locality as having a day-night average sound level of less than 65 decibels shall have the right to terminate a real estate purchase contract pursuant to this section for failure of the property owner to timely provide any disclosure required by § 55-519.1.

§ 55-524. Actions under this chapter.

A. Notwithstanding any other provision of this chapter or any other statute or regulation, no cause of action shall arise against an owner or a real estate licensee for failure to disclose that an occupant of the subject real property, whether or not such real property is subject to this chapter, was afflicted with human immunodeficiency virus (HIV) or that the real property was the site of:

1. An act or occurrence which had no effect on the physical structure of the real property, its physical environment, or the improvements located thereon; or
2. A homicide, felony, or suicide.

B. The purchaser's remedies hereunder for failure of an owner to comply with the provisions of this chapter are as follows:

1. If the owner fails to provide the disclosure statement required by this chapter, the contract may be terminated subject to the provisions of subsection B of § 55-520.
2. In the event the owner fails to provide the disclosure required by § 55-519.1, or the owner misrepresents, willfully or otherwise, the information required in such disclosure, except as result of information provided by an officer or employee of the locality in which the property is located, the purchaser may maintain an action to recover his actual damages suffered as the result of such violation. Notwithstanding the provisions of this subdivision, no purchaser of residential real property located in a **noise** zone designated on the official zoning map of the locality as having a day-night average sound level of less than 65 decibels shall have a right to maintain an action for damages pursuant to this section.

POLICIES

It is the policy of the Virginia Department of Transportation (VDOT) to employ the following criteria and procedures in determining the need for and the reasonableness and feasibility of **noise** abatement measures along Virginia's highways. The U. S. Code of Federal Regulations Part 772 (23 CFR 772) will be the guiding document for the analysis and abatement of highway traffic noise.

TYPE I PROJECTS

A Type I project involves the construction of a highway on new location or the physical alteration of an existing highway which significantly changes the horizontal or vertical alignment or increases the number of through traffic lanes. When the abatement criteria contained in this policy are satisfied in conjunction with a Type I project, noise abatement must be provided.

TYPE II PROJECTS (RETROFIT)

A Type II or retrofit project involves the construction of noise abatement along an existing highway when not in conjunction with an improvement of that highway. VDOT does not participate in Type II or retrofit noise abatement.

NOISE IMPACTS

- A. Noise impacts occur when the projected highway noise levels:
 1. Approach (reach one decibel less than) or exceed the Noise Abatement Criteria (NAC) contained in 23 CFR 772, or
 2. Exceed existing noise levels by a substantial amount (10 decibels or more).
- B. Noise impacts beyond 1000 feet (305 meters) from the roadway will not be considered in determining the need for noise abatement

ABATEMENT CRITERIA

- A. A noise abatement measure will be considered cost effective if the cost of the measure per protected residential property does not exceed \$30,000. Each residential (dwelling) unit will be considered as a single residential property.
- B. The cost-effectiveness determination for non-residential properties will be handled on a case by case basis and will include, in addition to the abatement cost, the type and

duration of the activity taking place, the size of the affected area, the severity of the impact, and the amount of noise reduction to be provided.

- C. To be protected, a property must be impacted and receive a minimum of 5 decibels of noise reduction.
- D. Extenuating circumstances will be considered on a case by case basis.

THIRD PARTY FUNDING

- A. When the cost of a noise abatement measure exceeds VDOT's cost effectiveness ceiling but the measure otherwise satisfies the criteria contained in this policy, the measure can still be constructed, provided
 1. A third party funds the amount above the cost ceiling and,
 2. VDOT receives the third party share prior to the date of submittal of the plans, Specifications, and Estimates (PS&E).
- B. If a third party requests the use of VDOT right of way for the construction of a noise abatement measure deemed unnecessary by VDOT, the request can be granted, provided:
 1. The third party assumes 100% of the abatement cost including, but not limited to, preliminary engineering, construction, and maintenance, and,
 2. VDOT's material, design, and construction specifications are met.

STATE FUNDED NOISE ABATEMENT

For state funded projects that meet the FHWA Type I project definition, VDOT will consider and, if reasonable and feasible, construct and maintain noise abatement measures, provided the local jurisdiction through which the project traverses:

1. Agrees to assume 50% of the abatement cost and.
2. Has an ordinance requiring developers to include noise abatement in their plans for residential and other noise sensitive developments adjacent to existing highways and future highway alignments previously adopted by the Commonwealth Transportation Board.

The abatement measures constructed by developers will ensure compliance with the FHWA Noise Abatement Criteria, where these criteria can be reasonably achieve, but will at the minimum provide 5 decibels of noise reduction for each property to be protected. The abatement measure can be located in total or partially right of way, provided:

- a. The developer complies with VDOT's design, construction, and materials specifications and,
- b. The local jurisdiction is responsible for maintaining the abatement measures.

UNDEVELOPED LAND

In assessing the noise abatement measures associated with a highway project, undeveloped lands will be treated as developed lands, if and only if a proposed land use development plan has been approved by the local jurisdiction prior to the date of approval of the project alignment by the Commonwealth Transportation Board. The final decision concerning noise abatement for a proposed development will be conditioned on two points:

1. The noise barrier will not be constructed until the portion of the development to be

- protected by the barrier is completed to the satisfaction of VDOT, and
2. When there is a substantial time lapse between the final decision and the date the development is completed, the noise barrier analysis will be updated and the decision will be reconsidered.

DECISION AUTHORITY

- A. For federal aid projects, the joint FHWA-VDOT Noise Abatement Committee will have the responsibility for assembling all relevant information and developing noise abatement related recommendation. On non-federal aid projects, the Committee's function will be carried out by its members.
- B. The Chief Engineer, on behalf of the Commonwealth Transportation Board, will make the final determination on all noise abatement related issues.