



Zoning Text Amendment (ZTA) No. 19-04, Animal Boarding and Care – Residential Zones

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Completed: 06/06/19

Description

Zoning Text Amendment (ZTA) 19-04 would allow Animal Boarding and Care as a limited and conditional use in all residential detached zones.

Summary

Under ZTA 19-04, staff has no objection to allowing Animal Boarding and Care as a limited use in the Residential Detached zones given that the intensity of the use (the number of animals, types of animals, and the duration of the activity) would be limited. However, staff recommends that the sponsor clarify the intent of whether the number of animals reflects a maximum daily figure or the maximum number of animals on the property at any given time. Staff recommends that the language be modified to limit boarding to a maximum of 4 animals at any one time.

Staff does not recommend adding the conditional use provision for allowing Animal Boarding and Care (beyond the limited use proposal) in the smaller lot R-90, R-60 and R-40 zones. Staff is concerned with the potential impacts of allowing an Animal Boarding and Care conditional use in the smaller lot residential detached zones where houses are typically closer together.

Background/Analysis

Animal Boarding and Care is defined as *the structures or land used for the boarding, breeding, or care of dogs, cats, pets, fowl, or other domestic animals at a location other than a Veterinary Office/Hospital, not including animals raised for agricultural purposes.* **Under ZTA 19-04, Animal Boarding and Care would not include the uncompensated breeding or care of dogs, cats, pets, fowl, or other domestic animals that belong to the owner or tenant of the property.**

Under the current Zoning Code, Animal Boarding and Care is allowed as a limited use in the Commercial/Residential (CR, CRT and CRN as of April 8, 2019 under ZTA 19-03) GR (General Retail), IL (Light Industrial) and IM (Moderate Industrial) zones and allowed with conditional use approval in the Agricultural, Rural Residential, RE-2, RE-2C, RE-1, R-200, and Neighborhood Retail (NR) zones. Currently, Animal Boarding and Care is not permitted in the smaller lot Residential Detached zones (R-90, R-60 and R-40). ZTA 19-04 proposes to allow this use under the limited use standards and conditional use provisions in all Residential Detached zones, as depicted and discussed below.

Limited Use Standards-Current

Currently, where Animal Boarding and Care is allowed as a limited use, it must satisfy the following standards:

- Any part of a building used for animal boarding or care must be soundproofed.
- If it is abutting or confronting a property zoned Agricultural, Rural Residential, or Residential Detached that is vacant or improved with an agricultural or residential use, site plan approval is required.
- An outdoor exercise yard is allowed if it is fenced and set back a minimum of 50 feet from any Residential zone.
- Any animal is prohibited from being outdoors between 9:00 p.m. and 7:00 a.m.

Under ZTA 19-04, these limited use standards will continue to apply in zones other than the Residential Detached zones. In the Residential Detached zones, the following standards would apply:

- Boarding is limited to a maximum of 4 animals.
- Animals are limited to dogs or cats.
- Boarding is limited to 4 days in any week.
- An outdoor exercise area is prohibited.

Staff has no objection to allowing animal boarding and care as a limited use in the Residential Detached zones given that the intensity of the use (the number of animals, types of animals, and the duration of the activity) would be limited. However, staff recommends that the sponsor clarify the intent on whether the number of animals reflects a maximum daily figure or the maximum number of animals at any given time. **Staff recommends that the language be modified to limit boarding to a maximum of 4 animals at any one time.** The prohibition on outdoor exercise areas would further limit the noise impacts associated with animal boarding.

Conditional Use Specific Standards

Where Animal Boarding and Care is allowed as a conditional use in the AR, R, RC, RNC, RE-2, RE-2C, RE-1, and R-200 zones¹, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

- The minimum lot area is 2 acres or the minimum lot area required for a detached house building type in the zone, whichever is greater.
- Exterior areas used to exercise, walk, or keep animals are set back a minimum of 200 feet from any lot line and screened under Division 6.5.
- All exterior exercise areas and runs are fenced.
- Animals are prohibited from being outdoors between 9:00 p.m. and 7:00 a.m.

¹ Animal Boarding and Care is also allowed as a conditional use in the NR zone, with a separate set of conditions related to an outdoor exercise yard and with a requirement for soundproofing the associated buildings.

- Animals must only be walked or exercised in on-site outdoor areas.
- The sound level at the nearest property line must satisfy Chapter 31B.²
- All buildings and accessory structures are set back a minimum of 75 feet from any lot line.
- All litter and animal waste is contained and controlled on the site.
- Any accessory operation, such as the sale of pet food and supplies, is in the statement of operations and is limited as an accessory activity to a maximum of 20% of sales.
- The Hearing Examiner may regulate hours of operation. The Hearing Examiner may also regulate the number of animals that may be boarded, exercised, walked, or kept in runs or similar areas, and how the animals are boarded, exercised, walked or kept.
- If the proposed use is located in an area that uses well water and septic facilities, the applicant must prove that the use will not have any negative effect on groundwater or septic systems.
- The applicant must submit: acoustical engineering studies that demonstrate that the proposed use will meet required noise levels; detailed floor plans that show all the interior areas, including runs and kennels; and site plans that show the layout of all exterior areas used to exercise, walk, or keep animals.

Under ZTA 19-04, Animal Boarding and Care would be allowed as a conditional use in the R-90, R-60 and R-40 zones, permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

- An outdoor exercise yard is allowed if:
 - All exterior exercise areas and runs are fenced.
 - Animals are prohibited from being outdoors between 9:00 p.m. and 7:00 a.m.
 - The sound level at the nearest property line satisfies Chapter 31B.
 - All accessory structures are set back a minimum of 75 feet from any lot line.
 - All litter and animal waste is contained and controlled on the site.
 - Any accessory operation, such as the sale of pet food and supplies, is in the statement of operations and is limited as an accessory activity to a maximum of 20% of sales.

Staff is concerned with the potential impacts of allowing an Animal Boarding and Care conditional use with outdoor exercise areas in the smaller lot residential detached zones where houses are typically closer together. The intensity of the proposed ZTA could engender significant community concern about barking dogs in single-family detached neighborhoods. Staff believes that this concern lead to the rationale for allowing Animal Boarding and Care as a conditional use only in the larger lot zones (RE-2, RE-2C, RE-1, and R-200) residential detached zones (along with the Agricultural and Rural Residential zones) where a significant setback from the property line could be provided to assist in mitigating the noise associated with barking dogs in an outdoor exercise area (a minimum of 200 feet). To ensure that this setback could be achieved, a minimum lot size of 2 acres is also required.

Given these potential concerns, **staff does not recommend approval of the conditional use provision for animal boarding and care in the smaller lot R-90, R-60 and R-40 zones.** Staff questions whether the

² The intent of Chapter 31B is to control noise sources to protect public health and welfare and to allow the peaceful enjoyment of property. See Attachment 2 of the staff report.

benefit to the community from the conditional use proposal outweighs the potential negative impacts to the smaller lot neighborhoods especially when alternatives for animal boarding are available in non-residential zones as well as larger lot residential zones where measures are in place to minimize the potential adverse impacts to surrounding properties.

Attachments

1. ZTA No. 19-04 as modified by staff
2. Chapter 31B Noise Control

ATTACHMENT 1

Zoning Text Amendment No.: 19-04
Concerning: Animal Boarding and
Care – Residential Zones
Draft No. & Date: 4 – 3/29/19
Introduced: May 14, 2019
Public Hearing:
Adopted:
Effective:
Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Council President Navarro
Co-Sponsor: Council Vice President Katz

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow Animal Boarding and Care as a conditional use in residential zones; and
- establish standards for approval for an Animal Boarding and Care use in residential zones

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

Division 3.1. “Use Table”
Section 3.1.6. “Use Table”
Division 3.5 “Commercial Uses”
Section 3.5.1. “Animal Services”

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

8 **Sec. 2. DIVISION 59-3.5 is amended as follows:**

9 **Division 3.5. Commercial Uses**

10 **Section 3.5.1. Animal Services**

11 **A. Defined, In General**

12 Animal Services means the structures or land used for the care of animals.
13 Animal Services does not include any use considered accessory to an
14 agricultural use.

15 **B. Animal Boarding and Care**

16 1. Defined

17 Animal Boarding and Care means [the structures or land used for] the
18 boarding, breeding, or care of dogs, cats, pets, fowl, or other domestic
19 animals at a location other than a Veterinary Office/Hospital [, not
20 including animals raised for agricultural purposes]. Animal Boarding
21 and Care does not include:

- 22 a. the uncompensated breeding or care of dogs, cats, pets, fowl, or
23 other domestic animals that belong to the owner or tenant of the
24 property; or
25 b. animals raised for agricultural purposes.

26 2. Use Standards

27 a. Where Animal Boarding and Care is allowed as a limited use in
28 zones other than Residential Detached zones, it must satisfy the
29 following standards:

- 30 i. Any part of a building used for animal boarding or care
31 must be soundproofed.
32 ii. If it is abutting or confronting a property zoned
33 Agricultural, Rural Residential, or Residential Detached
34 that is vacant or improved with an agricultural or

35 residential use, site plan approval is required under
36 Section 7.3.4.

- 37 iii. An outdoor exercise yard is allowed if:
- 38 (a) it is fenced and set back a minimum of 50 feet
 - 39 from any Residential zone; and
 - 40 (b) any animal is prohibited from being outdoors
 - 41 between 9:00 p.m. and 7:00 a.m.

42 b. In Residential Detached zones, where Animal Boarding and
43 Care is allowed as a limited use, it must satisfy all of the
44 following standards:

- 45 i. Boarding is limited to a maximum of 4 animals at any
- 46 one time.
- 47 ii. Animals are limited to dogs or cats.
- 48 iii. Boarding is limited to 4 days in any week.
- 49 iv. An outdoor exercise area is prohibited.

50 c. Where Animal Boarding and Care is allowed as a conditional
51 use, it may be permitted by the Hearing Examiner under
52 Section 7.3.1, Conditional Use, and the following standards:

- 53 i. In the AR, R, RC, RNC, RE-2, RE-2C, RE-1, and R-200
- 54 zones:

 - 55 (a) The minimum lot area is 2 acres or the minimum
 - 56 lot area required for a detached house building
 - 57 type in the zone, whichever is greater.
 - 58 (b) Exterior areas used to exercise, walk, or keep
 - 59 animals [must be] are set back a minimum of 200
 - 60 feet from any lot line and screened under Division
 - 61 6.5.

- 62 (c) All exterior exercise areas and runs [must be] are
63 fenced.
- 64 (d) Animals are prohibited from being outdoors
65 between 9:00 p.m. and 7:00 a.m.
- 66 (e) Animals must only be walked or exercised in on-
67 site outdoor areas.
- 68 (f) The sound level at the nearest property line must
69 satisfy Chapter 31B.
- 70 (g) All buildings and accessory structures [must be]
71 are set back a minimum of 75 feet from any lot
72 line.
- 73 (h) All litter and animal waste [must be] is contained
74 and controlled on the site.
- 75 (i) Any accessory operation, such as the sale of pet
76 food and supplies, [must be] is in the statement of
77 operations and [must be] is limited as an accessory
78 activity to a maximum of 20% of sales.
- 79 (j) The Hearing Examiner may regulate hours of
80 operation. The Hearing Examiner may also
81 regulate the number of animals that may be
82 boarded, exercised, walked, or kept in runs or
83 similar areas, and how the animals are boarded,
84 exercised, walked or kept.
- 85 (k) If the proposed use is located in an area that uses
86 well water and septic facilities, the applicant must
87 prove that the use will not have any negative effect
88 on groundwater or septic systems.

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- (1) The applicant must submit the following:
 - (1) Acoustical engineering studies that demonstrate that the proposed use will meet required noise levels. The studies must show the worst case scenario sound level (for example, full occupancy). The statement of operations [must be] is sufficiently detailed to allow determination of how often the worst case scenario sound level occurs.
 - (2) Detailed floor plans that show all the interior areas, including runs and kennels.
 - (3) Site plans that show the layout of all exterior areas used to exercise, walk, or keep animals.
- ii. In the Commercial/Residential and Employment zones, any part of a building used for animal boarding or care [must be] is soundproofed.
- iii. In the CRT, CR, and NR zones, an outdoor exercise yard is allowed if:
 - (a) it is fenced and set back a minimum of 50 feet from any Residential zone; and
 - (b) any animal is prohibited from being outdoors between 9:00 p.m. and 7:00 a.m.
- iv. In the R-90, R-60, and R-40 zones, an outdoor exercise yard is allowed if:
 - (a) All exterior exercise areas and runs are fenced.

- 115 (b) Animals are prohibited from being outdoors
- 116 between 9:00 p.m. and 7:00 a.m.
- 117 (c) The sound level at the nearest property line
- 118 satisfies Chapter 31B.
- 119 (d) All accessory structures are set back a minimum of
- 120 75 feet from any lot line.
- 121 (e) All litter and animal waste is contained and
- 122 controlled on the site.
- 123 (f) Any accessory operation, such as the sale of pet
- 124 food and supplies, is in the statement of operations
- 125 and is limited as an accessory activity to a
- 126 maximum of 20% of sales.

127 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the
128 date of Council adoption.

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130 This is a correct copy of Council action.

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133 Megan Davey Limarzi, Esq.
134 Clerk of the Council

Chapter 31B. Noise Control. [\[Note\]](#)

§ [31B-1](#). Declaration of policy.

§ [31B-2](#). Definitions.

§ [31B-3](#). Regulations.

§ [31B-4](#). Noise control advisory board.

§ [31B-5](#). Noise level and noise disturbance violations.

§ [31B-6](#). Noise level and noise disturbance standards for construction.

§ [31B-6A](#). Seasonal noise level standard for qualifying outdoor arts and entertainment activities.

§ [31B-7](#). Measurement of sound.

§ [31B-8](#). Noise sensitive areas.

§ [31B-9](#). Leafblowers.

§ [31B-10](#). Exemptions.

§ [31B-11](#). Waivers.

§ [31B-12](#). Enforcement and penalties.

 **Sec. 31B-1. Declaration of policy.**

(a) The County Council finds that excessive noise harms public health and welfare and impairs enjoyment of property. The intent of this Chapter is to control noise sources to protect public health and welfare and to allow the peaceful enjoyment of property. This Chapter must be liberally construed to carry out this intent.

(b) The Department of Environmental Protection administers this Chapter.

(1) The Department must coordinate noise abatement programs of all County agencies, municipalities, and regional agencies.

(2) A County agency, municipality in which this Chapter applies, or regional authority subject to County law must not adopt a standard or regulation that is less stringent than this Chapter or any regulation adopted under this Chapter.

(3) The Director may form an Interagency Coordinating Committee to assist the Director in coordinating noise control policy. If the Director forms the Committee, the Director must designate an individual to chair the Committee. The members of the Committee should be designated by County, local, and regional agencies that the Director invites to participate.

(4) The Department must establish procedures to identify and reduce noise sources when the County plans and issues permits, variances, exemptions, or approvals.

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(5) The Department should make recommendations to the County Executive, County Council, and Planning Board regarding noise control policy, regulations, enforcement, and noise sensitive areas. (1996 L.M.C., ch. 32, § 1.)

Editor's note—See County Attorney Opinion dated [3/16/92](#) explaining that the Washington Metropolitan Area Transportation Authority (esp. Metrorail) is subject to the County's noise control law, although an exemption may be obtained if it is in the public interest.

Sec. 31B-2. Definitions.

In this Chapter, the following words and phrases have the following meanings:

Arts and entertainment activity means a performance of artistic or creative work, such as a play, film, music, or dance, which is readily accessible to the public, whether or not admission is charged. *Arts and entertainment activity* includes the time necessary to set up and remove any structure or equipment used in the activity.

Construction means temporary activities directly associated with site preparation, assembly, erection, repair, alteration, or demolition of structures or roadways.

dBA means decibels of sound, as determined by the A-weighting network of a sound level meter or by calculation from octave band or one-third octave band data.

Daytime means the hours from 7 a.m. to 9 p.m. on weekdays and 9 a.m. to 9 p.m. on weekends and holidays.

Decibel means a unit of measure equal to 10 times the logarithm to the base 10 of the ratio of a particular sound pressure squared to the standard reference pressure squared. For this Chapter, the standard reference pressure is 20 micropascals.

Department means the Department of Environmental Protection.

Director means the Director of the Department of Environmental Protection or the Director's authorized designee.

Enforcement officer means:

(1) for a noise originating from any source:

- (A) an employee or agent of the Department designated by the Director to enforce this Chapter;
- (B) a police officer; or
- (C) a person authorized under Section [31B-12](#)(a) to enforce this Chapter;
- (D) a person authorized by a municipality to enforce this Chapter; or

(2) for a noise originating from an animal source, the Director of the Animal Services Division in the Police Department or the Director's authorized designee.

Impulsive noise means short bursts of a acoustical energy, measured at a receiving property line, characterized by a rapid rise to a maximum pressure followed by a somewhat slower decay, having a

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duration not greater than one second and a field crest factor of 10 dBA or more. Impulsive noise may include, for example, noise from weapons fire, pile drivers, or punch presses.

Leaf blower means any portable device designed or intended to blow, vacuum, or move leaves or any other type of unattached debris or material by generating a concentrated stream of air. Leafblower includes devices or machines that accept vacuum attachments.

Nighttime means the hours from 9 p.m. to 7 a.m. weekdays and 9 p.m. to 9 a.m. weekends and holidays.

Noise means sound, created or controlled by human activity, from one or more sources, heard by an individual.

Noise area means a residential or non-residential noise area:

(1) *Residential noise area* means land in a zone established under Section 2.1.3.A of [Chapter 59](#) for which the owner has not transferred the development rights, or Sections 2.1.3.B, 2.1.3.C, 2.1.3.D, 2.1.3.G, 2.1.3.H.1, or 2.1.3.H.2 of [Chapter 59](#), or by a political subdivision where [Chapter 59](#) does not apply.

(2) *Non-residential noise area* means land within a zone established under Section 2.1.3.A of [Chapter 59](#), for which the owner has transferred the development rights, or Sections 2.1.3.E, 2.1.3.F, 2.1.3.H.3, or 2.1.3.H.4 of [Chapter 59](#), or by a political subdivision where [Chapter 59](#) does not apply.

Noise disturbance means any noise that is:

- (1) unpleasant, annoying, offensive, loud, or obnoxious;
- (2) unusual for the time of day or location where it is produced or heard; or
- (3) detrimental to the health, comfort, or safety of any individual or to the reasonable enjoyment of property or the lawful conduct of business because of the loudness, duration, or character of the noise.

Noise sensitive area means land designated by the County Executive as a noise sensitive area under Section [31B-8](#).

Noise-suppression plan means a written plan to use the most effective noise-suppression equipment, materials, and methods appropriate and reasonably available for a particular type of construction.

Person means an individual, group of individuals, corporation, firm, partnership, or voluntary association; or a department, bureau, agency, or instrument of the County or any municipality, or of any other government to the extent allowed by law.

Prominent discrete tone means a sound, often perceived as a whine or hum, that can be heard distinctly as a single pitch or a set of pitches. A prominent discrete tone exists if the one-third octave band sound pressure level in the band with the tone exceeds the arithmetic average of the sound pressure levels of the 2 contiguous one-third octave bands by:

- (1) 5 dB for center frequencies of 500 Hz and above;
- (2) 8 dB for center frequencies between 160 and 400 Hz; or

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- (3) 15 dB for center frequencies less than or equal to 125 Hz.

Qualifying performing arts facility means the outdoor area of a building, outdoor seasonal, temporary, or permanent stage, or other clearly defined outdoor area or space, which is:

- (1) used for an outdoor arts and entertainment activity; and
- (2) owned or operated by the County; and

- (3) so designed by the County Executive in an Executive Order published in the County Register. The Executive may revoke a designation at any time by publishing an Executive Order revoking the designation in the County Register.

Receiving property means any real property where people live or work and where noise is heard, including an apartment, condominium unit, or cooperative building unit.

Sound means an auditory sensation evoked by the oscillation of air pressure.

Source means any person, installation, device, or animal causing or contributing to noise. (1996 L.M.C., ch. 32, § 1; [2001 L.M.C., ch. 2](#), § 1; [2011 L.M.C., ch. 7](#), § 1; [2016 L.M.C., ch. 8](#), § 1.)

Editor's note—See County Attorney Opinion dated [10/6/00](#) indicating that long-term parking on public streets is prohibited in certain circumstances, but not based on the size of the vehicle. See County Attorney Opinion dated [3/16/92](#) explaining that the Washington Metropolitan Area Transportation Authority (esp. Metrorail) is subject to the County's noise control law, although an exemption may be obtained if it is in the public interest.

Sec. 31B-3. Regulations.

The County Executive may establish noise control regulations and standards as necessary to accomplish the purposes and intent of this Chapter. Any regulation must be at least as stringent as this Chapter. The Executive by regulation may set fees that are sufficient to offset the costs of Department reviews or other actions required or authorized by this Chapter. (1996 L.M.C., ch. 32, § 1.)

Sec. 31B-4. Noise control advisory board.

- (a) A Noise Control Advisory Board must advise the County Executive, Director, County Council, and Planning Board on noise control issues, including administration and enforcement of this Chapter.

- (b) The Board consists of 11 members appointed by the Executive and confirmed by the Council.

- (c) The Board must elect one member as Chair and another member as Vice-Chair to serve at the pleasure of the Board. The Board must meet at the call of the chairperson as required to perform its duties, but not less than once each quarter. A majority of the members of the Board constitutes a quorum for transacting business. The Board may act by a majority vote of those present.

- (d) At least every third year, the Board must evaluate the effectiveness of the County's noise control program and recommend any improvements to the Director, County Executive, County Council, and Planning Board.

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(e) No later than March 1 each year, the Chair of the Board must report to the Director, County Executive, County Council, and Planning Board on activities and actions the Noise Control Advisory Board took during the previous calendar year.

(f) *Advocacy.* The Commission must not engage in any advocacy activity at the State or federal levels unless that activity is approved by the Office of Intergovernmental Relations. (1996 L.M.C., ch. 32, § 1; 1999 L.M.C., ch. 2, § 1; [2016 L.M.C., ch. 15](#), § 1.)

Editor's note-1999 L.M.C., ch. 2, § 1, increased the number of Board members from 7 to 11. 1999 L.M.C., ch. 2, § 2, states:

Sec. 2. Transition.

(a) The terms of the 4 members of the Noise Control Advisory Board added by this Act end:

- (1) for 1 member, on September 30, 1999, and every third year thereafter;
- (2) for 2 members, on September 30, 2000, and every third year thereafter; and
- (3) for 1 member, on September 30, 2001, and every third year thereafter.

(b) When appointing the first individual to serve in one of the 4 new positions, the County Executive must designate the term in subsection (a) for which the Executive is appointing the individual.

(c) This Act does not affect the term of any current member of the Board.

Cross reference-Boards and commissions generally, § [2-141](#) et seq.

 **Sec. 31B-5. Noise level and noise disturbance violations.**

(a) *Maximum allowable noise levels.*

(1) Except as otherwise provided in Sections [31B-6\(a\)](#), [31B-6A](#), and [31B-8](#), a person must not cause or permit noise levels that exceed the following levels:

<i>Maximum Allowable Noise Levels (dBA) for Receiving Noise Areas</i>		
	<i>Daytime</i>	<i>Nighttime</i>
Non-residential noise area	67	62
Residential noise area	65	55

(2) A person must not cause or permit the emission of a prominent discrete tone or impulsive noise that exceeds a level, at the location on a receiving property where noise from the source is greatest, that is 5 dBA lower than the level set in paragraph (1) for the applicable noise area and time.

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(3) Sound that crosses between residential and non-residential noise areas must not exceed the levels set in paragraph (1) for residential noise areas.

(b) *Noise disturbance.* A person must not cause or permit noise that creates a noise disturbance.

(c) *Examples.* The following examples illustrate common noise-producing acts that violate this section if they exceed the noise level standards set in subsection (a) or create a noise disturbance. The examples are illustrative only and do not limit or expand the noise level or noise disturbance standards of this section:

(1) Sounding a horn or other signaling device on any motor vehicle on private property except:

(A) in an emergency; or

(B) as a danger warning signal during daytime hours if the device complies with noise level limits.

(2) Operating a sound-producing device on public streets for commercial advertising or to attract public attention.

(3) Selling anything by outcry.

(4) Loading, unloading, opening, closing or otherwise handling containers, building materials, construction equipment, or similar objects.

(5) Operating a device that produces, reproduces, or amplifies sound.

(6) Allowing an animal to create a noise disturbance.

(7) Operating power equipment mounted on a motor vehicle or operating other devices powered by a generator or a motor vehicle. (1996 L.M.C., ch. 32, § 1; [2011 L.M.C., ch. 7](#), § 1.)

Editor's note—See County Attorney Opinion dated [10/6/00](#) indicating that long-term parking on public streets is prohibited in certain circumstances, but not based on the size of the vehicle. See County Attorney Opinion dated [3/16/92](#) explaining that the Washington Metropolitan Area Transportation Authority (esp. Metrorail) is subject to the County's noise control law, although an exemption may be obtained if it is in the public interest.

 **Sec. 31B-6. Noise level and noise disturbance standards for construction.**

(a) *Maximum allowable noise levels for construction.*

(1) A person must not cause or permit noise levels from construction activity that exceed the following levels:

(A) From 7 a.m. to 5 p.m. weekdays:

(i) 75 dBA if the Department has not approved a noise-suppression plan for the activity; or

(ii) 85 dBA if the Department has approved a noise-suppression plan for the activity.

(B) The level specified in Section 31B-5 at all other times.

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(2) Construction noise levels must be measured at the location, at least 50 feet from the source, on a receiving property where noise from the source is greatest.

(3) The Department must by regulation establish requirements for noise-suppression plans and adopt procedures for evaluating and approving plans. The regulations must provide that, at least 10 days before approving a noise-suppression plan, the Director must provide public notice reasonably calculated to reach at least a majority of households that might be affected by the construction activity noise levels above 75 dBA.

(b) *Construction noise disturbance.* The prohibition on noise disturbance in Section 31B- 5(b) applies to construction activities, notwithstanding subsection (a).

(c) *Examples.* The following examples illustrate common construction noise-producing acts that violate this section if they exceed the noise level standards set in subsection (a) or create a noise disturbance. The examples are illustrative only and do not limit or expand the construction noise level or noise disturbance standards of this section:

(1) Delivering materials or equipment, or loading or unloading during nighttime hours in a residential noise area.

(2) Operating construction equipment with audible back-up warning devices during nighttime hours. (1996 L.M.C., ch. 32, § 1.)

 **Sec. 31B-6A. Seasonal noise level standard for qualifying outdoor arts and entertainment activities.**

(a) Each outdoor arts and entertainment activity held at a qualifying performing arts facility must not exceed the following noise decibel limits:

(1) from 11 a.m. to 11 p.m. during April 1 through October 31, 75 dBA, as measured on the receiving property; and

(2) at all other times, the maximum allowable noise level set in Section [31B-5](#).

(b) A qualifying performing arts facility which has complied with this Section must not cause or permit noise levels from an outdoor arts and entertainment activity to exceed the standards in subsection (a).

(c) Any outdoor arts and entertainment activity conducted at a qualifying performing arts facility which has complied with this Section must not be cited as causing a noise disturbance.

(d) The Department must annually advise the Executive and Council, and the operator of each qualifying performing arts facility, whether the noise levels specified in this Section remain appropriate for that facility and the extent of compliance with those levels. ([2011 L.M.C., ch. 7](#), § 1)

 **Sec. 31B-7. Measurement of sound.**

(a) The Department must issue regulations establishing the equipment and techniques it will use to measure sound levels. The Department may rely on currently accepted standards of recognized organizations, including the American National Standards Institute (ANSI), American Society for Testing and Materials (ASTM), and the United States Environmental Protection Agency.

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(b) For multiple sources of sound, the Department may measure sound levels at any point to determine the source of a noise. (1996 L.M.C., ch. 32, § 1.)

 **Sec. 31B-8. Noise sensitive areas.**

(a) The County Executive may designate by regulation land within any geographical area as a noise sensitive area to protect public health, safety, and welfare. The regulation may prohibit certain noise producing activities in the noise sensitive area.

(b) A regulation under subsection (a) must:

- (1) describe the area by reference to named streets or other geographic features;
- (2) explain the reasons for the designation;
- (3) establish specific noise limits or requirements that apply in the noise sensitive area; and
- (4) describe by example or enumeration activities or sources that violate the limits or requirements.

(c) A regulation under subsection (a) may establish limits or requirements for a noise sensitive area that are more stringent than those that otherwise would apply to the area under this Chapter. (1996 L.M.C., ch. 32, § 1.)

 **Sec. 31B-9. Leafblowers.**

(a) Except as provided in this section, a person must not sell, buy, offer for sale, or use a leafblower at any time that has an average sound level exceeding 70 dBA at a distance of 50 feet. This requirement is in addition to any other noise level or noise disturbance standard that applies under this Chapter.

(b) An individual who owns or occupies a residence in a residential noise area may use at the individual's residence a leafblower bought or manufactured before July 1, 1990, until July 1, 1998, even if it exceeds the standard in subsection (a). After July 1, 1998, a person must not use any leafblower that violates the standard in subsection (a).

(c) The Department must apply the standard in subsection (a) in accordance with the most current leaf-blower testing standard of the American National Standards Institute (ANSI).

(d) The Department may inspect, and on its request a person must produce, any leafblower that is sold, offered for sale, or used in the County, to determine whether the leafblower complies with this section. A person who relies in good faith on a manufacturer's written representation of the sound level of a leafblower that has not been modified is not subject to a penalty for violating this section. (1996 L.M.C., ch. 32, § 1.)

 **Sec. 31B-10. Exemptions.**

(a) This Chapter does not apply to:

(1) agricultural field machinery used and maintained in accordance with the manufacturer's specifications;

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(2) emergency operations by fire and rescue services, police agencies, or public utilities and their contractors;

(3) a source or condition expressly subject to any State or federal noise-control law or regulation that is more stringent than this Chapter;

(4) sound, not electronically amplified, created between 7 a.m. and 11 p.m. by sports, amusements, or entertainment events or other public gatherings operating according to the requirements of the appropriate permit or licensing authority. This includes athletic contests, carnivals, fairgrounds, parades, band and orchestra activities, and public celebrations.

(b) The County Executive may issue regulations exempting from Section 31B-5 sources associated with routine residential living during daytime hours, such as home workshops, power tools, and power lawn and garden equipment, when used in accordance with manufacturer specifications. This exception does not apply to repairs or maintenance on a motor vehicle that is not registered for use on public roads. (1996 L.M.C., ch. 32, § 1.)

 **Sec. 31B-11. Waivers.**

(a) *Temporary waiver.*

(1) The Director may waive any part of this Chapter for a temporary event if the noise the event will create or cause in excess of the limits established under this Chapter is offset by the benefits of the event to the public.

(2) When the Director receives an application under this subsection, the Director must provide public notice of the application reasonably calculated to reach at least a majority of households that might be affected by noise levels anticipated for the event. The Director must not approve an application under this subsection less than 10 days after the public notice.

(b) *General waiver.*

(1) The Director may waive any part of this Chapter if the Director determines that compliance in a particular case is not practical and would impose undue hardship.

(2) When the Director receives an application under this subsection, the Director must schedule a hearing on the application within 60 days.

(3) At least 30 days before the hearing, the applicant must advertise the hearing by:

(A) placing a display advertisement in a newspaper of general circulation in the community where the source that is the subject of the application is located; and

(B) posting a sign at the location of the source.

(4) Based on evidence presented at the hearing, the Director may grant a waiver for up to 3 years, under terms and conditions appropriate to reduce the impact of the exception.

(5) The Director may renew a waiver granted under this subsection if the applicant shows that the circumstances supporting the original waiver have not changed.

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(c) *Violation of waiver.* The Director may suspend, modify, or revoke a waiver granted under this section if a person violates the terms or conditions of the waiver.

(d) *Regulations and fees.* The County Executive must issue regulations implementing this section that:

- (1) set the procedures and fees to apply for a waiver under subsections (a) or (b);
- (2) require the applicant to use the best technology and strategy reasonably available to mitigate noise, as determined by the Director;
- (3) allow temporary waivers under subsection (a) of no more than 30 days, renewable at the discretion of the Director no more than twice; and
- (4) specify the requirements for the hearing advertisement and sign required under subsection (b)(3). (1996 L.M.C., ch. 32, § 1.)

 **Sec. 31B-12. Enforcement and penalties.**

(a) The Department must enforce this Chapter. The County Executive may delegate in writing the authority to enforce parts of this Chapter to the Police Department or any other Executive agency.

(b) A violation of this Chapter is a Class A violation. Each day a violation continues is a separate offense. A violation of Section 31B-6 is a separate offense in addition to any other violation of this Chapter arising from the same act or occurrence.

(c) The Department may seek injunctive or other appropriate judicial relief to stop or prevent continuing violations of this Chapter.

(d) If the Director finds that a person has violated this Chapter, the Director may issue a notice of violation and corrective order to the person. The notice must contain the following information:

- (1) the section of this Chapter that the person violated;
- (2) the date, nature, and extent of the violation;
- (3) the action required to correct the violation;
- (4) if the Director requires a compliance plan, the deadline for submitting the plan to the Director; and
- (5) the deadline for compliance.

(e) The compliance plan referred to in subsection (d)(4) must establish a schedule for achieving compliance with this Chapter, as specified in the corrective order. A compliance plan, and amendments to a plan, are not effective until the Director approves the plan or amendment. An action allowed under an approved compliance plan does not violate this Chapter.

(f) An enforcement officer may issue a civil citation for any violation of this Chapter if the enforcement officer:

- (1) witnesses the violation; or

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(2) receives complaints from at least 2 witnesses of a noise disturbance.

Complaints by 2 witnesses are required to issue a citation under paragraph (2), but are not required to prove that a person violated this Chapter.

(g) The Director of the Animal Services Division may initiate administrative action before the Animal Matters Hearing Board instead of an enforcement officer issuing a citation under subsection (f) for a violation of this Chapter originating from an animal source.

(h) A person aggrieved by any action or order of the Director under Sections 31B-9 and 31B-11 may seek reconsideration within 10 days after the date of the action or order. A request for reconsideration must be in writing to the Director, and must specify the date and nature of the action or order, the injury sustained, the remedy requested, and the legal basis for the remedy. If the Director finds that there are material facts in dispute, the Director may refer the matter to a hearing officer under the procedures specified in Chapter 2A. If the Director finds that there are no material facts in dispute, the Director must make a final decision on the request for reconsideration in writing within 45 days after receiving the request. The aggrieved person may appeal from the Director's final decision within 30 days after the Director issues the decision, as provided in Section 2A-11.

(i) (1) A person responsible for a violation of Section 31B-6 and the person responsible for the management or supervision of the construction site where the source of the violation is located are jointly and severally liable for the violation.

(2) For recurring violations of Section 31B-6 on the same construction site, in addition to any other penalty under this Chapter, the Director may issue a stop work order, as provided in Section 8-20, for up to:

(A) 3 consecutive working days for a second violation within 30 days after the first violation;

(B) 5 consecutive working days for a third violation within 60 days after the first violation; and

(C) 7 working days per offense for the fourth and subsequent violations within a 120-day period.

(3) This Chapter does not limit the Director's authority under Chapter 8 to revoke a permit or approval issued under that Chapter.

(j) Any person aggrieved by a violation of this Chapter may file a civil action in any court with jurisdiction against a person responsible for the alleged violation. The aggrieved person must notify the alleged violator and the Director of the alleged violation at least 60 days before filing the action. A person must not file an action under this subsection if the County Attorney has filed a civil action against the same alleged violator regarding the same violation. (1996 L.M.C., ch. 32, § 1; [2001 L.M.C., ch. 2, § 1.](#))