

**TOWN OF LEESBURG
NOTICE OF PUBLIC
HEARING
LEESBURG TOWN CODE
AMENDMENT:**

NOISE ORDINANCE LOCATED AT CHAPTER 24 (OFFENSES AND MISCELLANEOUS PROVISIONS); ARTICLE V (OFFENSES AGAINST PUBLIC PEACE AND ORDER); DIVISION 1 (GENERALLY) SECTION 24-182 (DECLARATION OF POLICY)

Pursuant to the Code of Virginia of 1950, as amended, Sections 15.2-1427, 15.2-980, and 15.2-919, the **LEESBURG TOWN COUNCIL** will hold a Public Hearing on **March 25, 2014, at 7:30 p.m.**, Council Chambers at Town Hall, 25 West Market Street, Leesburg, Virginia, 20176, to consider:

Amending the Leesburg Town Code Noise Ordinance located at Chapter 24, Article V, Division 1, Section 24-182, to include revised standards to regulate noise levels in both residential and commercial districts. These revised standards may include decibel levels which will be measured by law enforcement officers with sound level meters to aid in enforcement of the noise ordinance.

A copy of the full text of the proposed ordinance is available from the Town Clerk, located in Town Hall, 25 West Market Street, Leesburg, Virginia, during normal business hours (Monday-Friday, 8:30 a.m. to 5:00 p.m.); or by calling Lee Ann Green, Town Clerk, at 703-771-2733.

At this hearing, all persons desiring to express their views concerning these matters will be heard. Persons requiring special accommodations should contact the Clerk of Council at 703-771-2733, three days in advance of the meeting. For TTY/TDD service, use the Virginia Relay Center by dialing 711.

Ad #

3/20/14



Date of Council Meeting: March 25, 2013

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: Town of Leesburg Amended Noise Ordinance

Staff Contact: Scott E. Parker, AICP, Assistant Town Manager

Issue: Should the Town consider amending the current Town Noise Ordinance?

Background: In 2009, the Town of Leesburg amended its noise ordinance in order to bring it in to line with a Virginia Supreme Court decision which invalidated the Virginia Beach noise ordinance on the grounds of enforceability and vagueness. But with the emergence of nightlife within various commercial areas of the Town, and with it some complaints related to commercial establishments and residences, staff believes that the Ordinance needs updating again to better define regulatory standards.

The Leesburg Police Department (LPD) is responsible for enforcing the Town’s noise ordinance, although the Zoning Ordinance also has standards to regulate stationary noise sources (mechanical equipment, fans, etc.) for various zoning designations. This are addressed via code compliance as opposed to law enforcement, but law enforcement can, and does, respond to these kinds of complaints as well.

The LPD has determined that the current noise ordinance has done an adequate job of enforcing noise complaints in residential areas, but it is proving to be problematic in the commercial areas. Particularly when the noise complaint is from a residential area and the source of the noise is from a commercial area. The goal of enforcement has always been to have voluntary compliance via a “first warning” before citations are issued, and that approach will be continued. The following is a compilation of noise complaints received by the LPD for the time frame of January 1, 2013 through December 31, 2013:

| Complaint Type | Town-wide | Downtown Vicinity |
|----------------|-----------|-------------------|
| Loud Music | 199 | 25 |
| Loud Noise | 275 | 18 |
| Total | 474 | 43 |

Of the total number of complaints shown above, the number of complaints received regarding the downtown vicinity represents 9% of the total number of complaints received. While this is still a low figure, it does represent an increase over the previous year, and with the emergence of night time activities downtown, it is anticipated that this number could go higher.

While researching the scope of amending the ordinance, Town staff has analyzed numerous noise ordinances from a variety of jurisdictions (Attachment 1), and our research has indicated two different types of ordinances that are used:

- The “plainly audible” standard (“per se” violations), which is what the current Town of Leesburg noise ordinance is based on.
- Decibel-based noise ordinances.

Decibel-based ordinances have proven to be more difficult to enforce than ordinances that rely on “per se” violations. Decibel ordinances require the use of technical equipment, with close attention being paid to the actual method of measuring sound. Complications include “ambient sound.” Although more expensive sound level meters can distinguish ambient (or background) noise, law enforcement officers must be trained in the proper use of the meters.

The Town of Leesburg does not currently use a decibel based noise ordinance, and therefore the LPD does not have the required sound metering equipment or officers trained for the use of said equipment. Although this would be a new form of noise enforcement for the Town, the equipment could indeed be purchased and officers trained in its use if that is the direction of Council. Prices vary for this type of equipment, and can range from approximately \$3,000.00 to \$7,000.00 each. Training costs associated with the equipment is not readily known at this point.

Generally, decibel-based ordinances provide that the operator of a noise meter for a complaint shall issue a certificate to indicate that:

1. The sound level meter was operated in accordance with the manufacturer’s specifications.
2. The locality has on file a sworn report that states that the meter has been tested within a specific period of time (often, twelve months) and found to be accurate.
3. The location of the noise.
4. The name of the accused.
5. The date and time the reading was made.
6. The decibel level reading.

This process is not dissimilar to the recording of speed violations with radar and similar equipment.

A decibel-based ordinance would typically contain a chart of times, zoning areas, and decibel standards for each. Decibel levels vary between communities as the attached information indicates.

Current Town Ordinance and Amendment

As stated above, our current noise ordinance is based on the “per se” or plainly audible standard. As such, staff has provided an ordinance that amends the current plainly audible standards (Attachment 2). While it is certainly possible to change the ordinance to a decibel-based standard, it is staff’s opinion, based on the wide range of decibel levels

across jurisdictions as the attached chart indicates, that wider discussions about an appropriate policy would be required before a standard could be applied.

Staff believes that amending our current ordinance to more clearly define time frames related to plainly audible noise creates a more cohesive policy to address the emergence of night life and activities in the downtown when compared to impacts on residential neighborhoods.

The specific code section to be amended to address the standards discussed above is Section 24-182(3), which currently states:

- (3) *Specific prohibitions.* Subject to the exceptions provided in subsection [24-182\(4\)](#), any of the following acts, or the causing or permitting thereof is declared to be excessive noise, constituting a class 2 misdemeanor and a public nuisance:
 - a. *Radios, television sets, musical instruments and similar devices.* Operating, playing or permitting the operation or playing of any radio, television, record, tape or compact disc player, drum, musical instrument, or similar device:
 - 1. In such a manner as to permit sound to be heard across a residential real property boundary or through partitions common to two dwelling units within a building; or
 - 2. In such a manner as to be plainly audible at a distance of 50 feet or more from the building in which it is located; or
 - 3. When the sound is plainly audible at a distance of 50 feet or more from its source.

The amended code section would read as follows:

- (3) *Specific prohibitions.* Subject to the exceptions provided in subsection [24-182\(4\)](#), any of the following acts, or the causing or permitting thereof is declared to be excessive noise, constituting a class 2 misdemeanor and a public nuisance:
 - a. In residential areas: To use, operate or play, or to permit the use, operation or playing of any radio, phonograph, television, record, compact disc or tape player, musical instrument, loudspeaker, sound amplifier or other machine or device capable of producing or reproducing sound in such a manner or with such volume or duration that it is plainly audible:
 - 1. Inside the confines of a dwelling unit, house or apartment of another or through partitions common to two dwelling units within a building; or
 - 2. In such a manner as to be plainly audible at a distance of 50 feet or more from the building in which it is located; or
 - 3. When the sound is plainly audible at a distance of 50 feet or more from its source.
 - b. In commercial areas: To use, operate or play, or to permit the use, operation or playing of any radio, phonograph, television, record, compact disc or tape player, musical instrument, loudspeaker, sound amplifier or other machine or device capable of producing or reproducing sound in such a manner or with such volume or duration that is plainly audible between 10:00 p.m. and 8:00 a.m., Sunday through Wednesday and between 11:00 p.m. and 8:00 a.m., Thursday through Saturday:
 - 1. Inside the confines of a dwelling unit, house or apartment of another person; or;

2. Through the partitions common to two dwelling units within a building; or; or
3. At a distance of 50 feet or more from its source.
4. Notwithstanding the above, at no time shall any person permit, operate or cause to permit a sound level emanating from a building, lot or outdoor space in a commercial area during the hours between 8:00 a.m. and 10:00 p.m. in excess of 70 dB(A), or between the hours between 10:01 p.m. and 7:59 a.m. in excess of 55 dB(A) when measured from any place in a residential area. A sound level meter shall be used to measure the sound level.

Because this amendment now delineates residential and commercial areas, as well as creating time frames for the plainly audible standard in commercial areas that did not exist before, staff believes that in order to accommodate some form of outdoor entertainment, staff has included in (4) above a “not to exceed” decibel standard for residential areas that does not currently exist. Without this provision, sound and noise generated outside of the ascribed times within a commercial area would not have a limit. Please note that we did not include a “not to exceed” standard for commercial areas. Should the decision be to do so, it could be added.

This provision would require that the Town acquire a sound meter device and train LPD in its use. We do believe that even though we are adding a decibel standard, we think it is limited enough so that it does not create issues identified with a full decibel-based ordinance as is referenced earlier in this report.

In addition, it should be noted that the provisions for exceptions to this section will remain as they currently exist in the current ordinance.

Other changes

There are other changes to the ordinance as well, which are shown on Attachment 2. The additional changes are:

- The addition of Section 24-182 (d) to address noise generated by a gathering of ten or more people. The plainly audible sections referred to above related to sound that is mechanically produced. This section addresses noise from gatherings of people, in residential and commercial areas, that is created by non-mechanical means (ie. yelling, shouting, parties, etc.)
- The elimination from the definition section of the term “sound amplifying equipment” and the elimination of section 24-182(5), *Sound amplifying equipment- Registration*. This current provision in the code provides that “... no person shall use or cause to be used sound amplifying equipment in or over the town, unless such equipment is first registered with the town. Application for such registration shall be filed with the Town Manager at least 48 hours in advance of the use and shall state the following...”

This provision, which becomes irrelevant if the other amendments referenced above are incorporated, has proven cumbersome in its application. First, permit requirements state that sound amplifying equipment’s operation “shall not begin before 10:30 a.m. or extend past 8:00 p.m.” The problems have been with enforceability (whom) and the fact that it applies to both residential and

commercial properties. This limits the ability of a commercial establishment to utilize sound equipment at all after 8:00 p.m., as there is no distinction between inside or outside, and it limits the ability of a residential property to utilize a DJ or have music outside for parties, etc. after 8:00 p.m. If it is deemed necessary to remain, it is suggested that this section be amended to match other ordinance time frame requirements, such as the 10:00 p.m. and 11:00 p.m. times respectively.

Summary and conclusion

There are two approaches to the amendment of this ordinance, and staff recommends that further input from stakeholders should be gathered before a decision is made. The approach that staff has taken with this report is to amend and clarify our existing ordinance, which relies on a “plainly audible” standard, amended to add a “not to exceed” decibel standard for residential areas. It should be pointed out that some communities with the plainly audible standard do not allow outside music. The physical prohibition of this type of activity is an option as well.

The other approach would be a full decibel-based approach, which would amend the ordinance to create specific decibel levels and specific times for specific. Since this is a new standard for the Town of Leesburg ordinance, it should be noted that this approach comes with a different enforcement mechanism through the use of a mechanical sound measuring device, training, and the establishment of a policy that creates the various sound levels.

While staff has concluded that both approaches are viable and can be enacted, our analysis suggests that an amendment to our existing plainly audible standard as outlined and attached here may be easier and more predictable to implement. We believe that a direction to balance the goals of increased night time activities in commercial areas and reasonable accommodation and expectation of residential areas is best achieved by the amendment to the current ordinance we have presented.

Scott E. Parker, AICP
Assistant Town Manager

Attachments:

1. Jurisdiction Comparison
2. Proposed Ordinance (strike out version)
3. Proposed Ordinance (clean version)
4. Decibel Chart Comparison

| NOISE ORDINANCE COMPARISON | | | |
|----------------------------|---|---|--|
| JURISDICTION | RESIDENTIAL STANDARD | COMMERCIAL STANDARD | COMMENTS |
| Herndon | Amplification that is plainly audible between 10:00 p.m. and 7:00 a.m. inside house of another or 50 feet from source. | Same as residential. | Still has permits. |
| Chesterfield County | Amplification plainly audible between 12:01 a.m. and 7:00 a.m. from inside the house of another or 50 ft. from source. | Same as residential. | Excessive noise is also gatherings of 10 or more people when plainly audible in confines of another or 50 feet from the source. |
| Alexandria | Amplification plainly audible between 11:00 pm. and 7:00 a.m. from boundary and 50 ft. from source. 55 d(B)A at boundary | Central Business District 7 am to 11 pm 75 d(B)A 11 pm to 7 am 65 d(B)A Other commercial: 60 Measured from 50 ft. | Still has permits. |
| Hanover | Day: 7 am to 10 pm 57 Night: 52 Measured from property of another. | Day: 7 am to 10 pm 67 Night: 62 Measured from property of another. | Criminal and Civil penalties; Over 90 d(B)A must post signs. Sound is measured from zoning classification where measured not produced. |
| Falls Church | Day: 60 d(B)A Night: 55 d(B)A | Day and Night: 65 d(B)A | Sound is measured from "any point within any other property affected by the sound"; City Manager may grant a "variance" when potential danger is outweighed by public benefit. |
| Arlington | Day: 7:00 a.m. to 9:00 p.m. on weekdays and 10:00 a.m. to 9:00 p.m. on weekends: 60 d(B)A Night: 55 d(B)A | 70 d(B)A day and night (regular commercial) 65 d(B)A office | Measured from distance not less than 50 feet from noise source; different hours for weekend noise |
| Virginia Beach | Day: 7:00 a.m. to 10 pm: 65 d(B)A Night: 55 d(B)A | Restaurants only: Day: 7am to 11pm: 80 d(B)A | Residential-measured inside 4 ft. from wall with windows and door |

| | | | |
|----------------|--|---|---|
| | | Night: 75 d(B)A | closed; restaurant measured from any public area |
| Williamsburg | Amplification plainly audible across boundary line or 50 ft. from source. 11:00 p.m. to 7:00 a.m. Outdoors 7:00 am to 11:00 pm: 65 d(B)A 11:00 p.m. to 7:00 a.m.: 55 d(B)A Indoors Day: 55 d(B)A Night: 50 d(B)A | Outdoors (24 hrs.): 65 d(B)A Indoors (24 hrs.): 55 d(B)A Measured at or outside property boundary of source. Most restrictive district applies. | Sound measured from property boundary; or inside common areas. Also has maximum 75 d(B)A for public streets and sidewalks measured from 10 ft. from sound. Also has "large party nuisance"- plainly audible sound that continues for 30 mins or more measured from property line from 11:00 p.m. to 7:00 a.m. |
| Frederick, MD | Day: 7 am to 10 pm: 65 d(B)A Night: 10 pm. To 7 am: 55 d(B)A | Regular commercial: Day: 7: a.m. to 10:00 p.m. 67 d(B)A Night: 10:00 p.m. to 7:00 a.m. 62 d(B)A | Businesses licensed to serve alcohol cannot use amplification so that sound is plainly audible on a residential property and audible at a distance of 100 ft. from device producing sound. |
| Fairfax County | Illegal to create sound that is audible in any other person's dwelling with other person's doors and windows closed. Also sound must be discernible regardless of whether doors and windows are closed. | | Interim solution for excessive sound in residential areas during holiday season. |

Typical dbA levels

| | |
|---------|---|
| 190 dBA | Heavy weapons, 10 m behind the weapon (maximum level) |
| 180 dBA | Toy pistol fired close to ear (maximum level) |
| 170 dBA | Slap on the ear, fire cracker explodes on shoulder, small arms at a distance of 50 cm (maximum level) |
| 160 dBA | Hammer stroke on brass tubing or steel plate at 1 m distance, airbag deployment very close at a distance of 30 cm (maximum level) |
| 150 dBA | Hammer stroke in a smithy at 5 m distance (maximum level) |
| 130 dBA | Loud hand clapping at 1 m distance (maximum level) |
| 120 dBA | Whistle at 1 m distance, test run of a jet at 15 m distance |
| | Threshold of pain, above this fast-acting hearing damage in short action is possible |
| 115 dBA | Take-off sound of planes at 10 m distance |
| 110 dBA | Siren *) at 10 m distance, frequent sound level in discotheques and close to loudspeakers at rock concerts, violin close to the ear of an orchestra musicians (maximum level) |
| 105 dBA | Chain saw at 1 m distance, banging car door at 1 m distance (maximum level), racing car at 40 m distance, possible level with music head phones |
| 100 dBA | Frequent level with music via head phones, jack hammer at 10 m distance |
| 95 dBA | Loud crying, hand circular saw at 1 m distance |
| 90 dBA | Angle grinder outside at 1 m distance |
| | Over a duration of 40 hours a week hearing damage is possible |
| 85 dBA | 2-stroke chain-saw at 10 m distance, loud WC flush at 1 m distance |
| 80 dBA | Very loud traffic noise of passing lorries at 7.5 m distance, high traffic on an expressway at 25 m distance |
| 75 dBA | Passing car at 7.5 m distance, un-silenced wood shredder at 10 m distance |
| 70 dBA | Level close to a main road by day, quiet hair dryer at 1 m distance to ear |
| 60 dBA | Noisy lawn mower at 10 m distance |
| 55 dBA | Low volume of radio or TV at 1 m distance, noisy vacuum cleaner at 10 m distance |
| 50 dBA | Refrigerator at 1 m distance, bird twitter outside at 15 m distance |
| 45 dBA | Noise of normal living; talking, or radio in the background |
| 40 dBA | Distraction when learning or concentration is possible |
| 35 dBA | Very quiet room fan at low speed at 1 m distance |
| 25 dBA | Sound of breathing at 1 m distance |
| 0 dB | Auditory threshold |
| | |

PRESENTED: March 25, 2014

ORDINANCE NO. _____

ADOPTED: _____

AN ORDINANCE: TO ADD AND AMEND TOWN CODE CHAPTER 24 (OFFENSES MISCELLANEOUS PROVISIONS); ARTICLE v (OFFENSES AGAINST PEACE AND ORDER); DIVISION 1 (GENERALLY) SECTION 24-182 (DECLARATION OF POLICY)

The Council of the Town of Leesburg in Virginia hereby amends and ordains:

SECTION I.

Section 24-182. Declaration of policy.

At certain levels, noise can be detrimental to the health, welfare, safety and quality of life of inhabitants of the town, and in the public interest noise should be restricted. Mass outdoor social gatherings, using amplified sound, ~~in this town, unless subjected to coordination and planning efforts with the town,~~ create excessive noise and related adverse effects for the citizens of this town. It is, therefore, the policy of the town to reduce, and eliminate where possible, excessive noise and related adverse conditions in the community, and to prohibit unnecessary, excessive, harmful and annoying noises from all sources subject to its police power.

Definitions. The following words, when used in this chapter, shall have the following respective meanings, unless the context clearly indicates a different meaning:

Commercial areas means all properties zoned for any business use.

Decibel means the unit of sound magnitude equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the sound pressure being measured to a reference sound pressure, twenty (20) microneutons per square meter (20 micropascals).

Excessive noise means any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans. Specific examples of prohibited excessive noise are set forth in subsection [24-182\(3\)](#) of this chapter.

Motor vehicle means a vehicle defined as a motor vehicle by Code of Virginia (1950), § 46.2-100, as amended.

Owner means the person owning, controlling, or possessing land, premises, or personality.

Person means any individual, partnership, corporation, association, society, club, group of people acting in concert, or organization. This term shall not include the federal, state, county, town, city, or local government, or any agency or institution thereof.

Plainly audible means any sound that can be heard clearly by a person using his or her unaided hearing faculties. When music is involved, the detection of rhythmic bass tones shall be sufficient to be considered plainly audible sound.

Public property means any real property owned or controlled by the town or any other governmental entity or institution.

Public right-of-way means any street, avenue, boulevard, highway, sidewalk or alley.

~~*Real property boundary* means the property line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person.~~

Residential areas refers to single-unit, two-unit, and multi-unit dwellings, and residential areas of planned residential zoning district classifications, as set ~~forth~~ in the zoning ordinance.

AN ORDINANCE: TO ADD AND AMEND TOWN CODE CHAPTER 24 (OFFENSES MISCELLANEOUS PROVISIONS); ARTICLE v (OFFENSES AGAINST PEACE AND ORDER); DIVISION 1 (GENERALLY) SECTION 24-182 (DECLARATION OF POLICY)

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

Sound amplifying equipment means any machine or device for the amplification of the human voice, music or any other sound. This term shall not include warning devices on authorized emergency vehicles, or horns or other warning devices on other vehicles used only for traffic safety purposes.

Sound level is the intensity in decibels of a sound.

Sound level meter is an instrument used for measurement of sound levels which meets the standards set forth in Code of Virginia of 1950, as amended, § 2.2-1112.

~~*Town manager* means the town manager or the chief of police, or their respective designees.~~

(2) *Excessive noise—Punishments.* Any person violating any of the provisions of this chapter shall be deemed guilty of a class 2 misdemeanor. Each day the violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

(3) *Specific prohibitions.* Subject to the exceptions provided in subsection [24-182\(4\)](#), any of the following acts, or the causing or permitting thereof is declared to be excessive noise, constituting a class 2 misdemeanor and a public nuisance:

~~a. *Radios, television sets, musical instruments and similar devices.* Operating, playing or permitting the operation or playing of any radio, television, record, tape or compact disc player, drum, musical instrument, or similar device:~~

~~1. In such a manner as to permit sound to be heard across a residential real property boundary or through partitions common to two dwelling units within a building; or~~

~~2. In such a manner as to be plainly audible at a distance of 50 feet or more from the building in which it is located; or~~

~~3. When the sound is plainly audible at a distance of 50 feet or more from its source.~~

~~b. *Loudspeakers, public address systems and sound trucks.* Using, operating or permitting the operation of any loudspeaker, public address system, mobile sound vehicle or similar device amplifying sound therefrom for any purpose in such a manner as to permit sound to be heard across a residential real property boundary, or through partitions common to two dwelling units within a building.~~

a. *In residential areas:* To use, operator or play, or to permit the use, operation or playing of any radio, phonograph, television, record, compact disc or tape player, musical instrument, loudspeaker, sound amplifier or other machine or device capable of producing or reproducing sound in such a manner or with such volume or duration that it is plainly audible:

1. Inside the confines of a dwelling unit, house or apartment of another or through partitions common to two dwelling units within a building; or

2. In such a manner as to be plainly audible at a distance of 50 feet or more from the building in which it is located; or

3. When the sound is plainly audible at a distance of 50 feet or more from its source.

AN ORDINANCE: TO ADD AND AMEND TOWN CODE CHAPTER 24 (OFFENSES MISCELLANEOUS PROVISIONS); ARTICLE v (OFFENSES AGAINST PEACE AND ORDER); DIVISION 1 (GENERALLY) SECTION 24-182 (DECLARATION OF POLICY)

- b. In commercial areas: To use, operate or play, or to permit the use, operation or playing of any radio, phonograph, television, record, compact disc or tape player, musical instrument, loudspeaker, sound amplifier or other machine or device capable of producing or reproducing sound in such a manner or with such volume or duration that is plainly audible between 10:00 p.m. and 8:00 a.m., Sunday through Wednesday and between 11:00 p.m. and 8:00 a.m., Thursday through Saturday:
1. Inside the confines of a dwelling unit, house or apartment of another person; or
 2. Through the partitions common to two dwelling units within a building; or
 3. At a distance of 50 feet or more from its source.
 4. Notwithstanding the above, at no time shall any person permit, operate or cause to permit a sound level emanating from a building, lot or outdoor space in a commercial area during the hours between 8:00 a.m. and 10:00 p.m. in excess of 70 dB(A), or between the hours between 10:01 p.m. and 7:59 a.m. in excess of 55 dB(A) when measured from any place in a residential area. A sound level meter shall be used to measure the sound level.
- c. To allow excessive noise between the hours of 10:00 p.m. and 8:00 a.m. Sunday through Wednesday and between 11:00 p.m. and 8:00 a.m. Thursday through Saturday that is plainly audible either inside the confines of the dwelling unit, house or apartment of another person or at 50 feet or more from the source when the noise is generated from a gathering of ten or more people.
- d. Loudspeakers, public address systems and sound trucks. Using, operating or permitting the operation of any loudspeaker, public address system, mobile sound vehicle or similar device amplifying sound therefrom for any purpose in such a manner as to permit sound to be heard inside the confines of a dwelling unit, house or apartment of another person, or through partitions common to two dwelling units within a building or at a distance of 50 feet or more from its source.
- ee. Horns, whistles, etc. Sounding or permitting the sounding of any horn, whistle or other auditory sounding device on or in any motor vehicle on any public right-of-way or public property, except as a warning of danger.
- ff. Explosive, fireworks and similar devices. Using or firing any explosives, fireworks or similar devices which create impulsive sound in such a manner as to permit sound to be heard across a residential real property boundary or through partitions common to two dwelling units within a building, or on any public right-of-way or public property, in either case between the hours of 10:00 p.m. and 8:00 a.m. An exception to the hours limitation of this subsection may be granted by town council through a fireworks permit.
- ge. Yelling, shouting, etc. Yelling, shouting, whistling or singing between the hours of 10:00 p.m. and 8:00 a.m. in such a manner as to permit sound to be heard across a residential real property boundary or through partitions common to two dwelling units within a building.
- hf. Schools, public buildings, places of worship, and hospitals. The creation of any noise on the grounds of any school, court, public building, place of worship, or hospital, in a manner that is plainly audible within such school, court, public building, place of worship or hospital and interferes with the operation of the institution.

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ig. *Vehicles.* Operation of a motor vehicle or operation of a motorcycle within the town that creates mechanical or exhaust noise that is plainly audible at a distance of 200 feet or more from the vehicle. Operation of sound amplifying equipment in a motor vehicle at a volume sufficient to be plainly audible at a distance of 100 feet from the vehicle.

jh. *Construction.* The erection, including excavation, demolition, alteration, or repair of any building, street, public facility, or improvement between the hours of 10:00 p.m. and 6:30 a.m., except in the case of that it is in the best interests of the public, for public improvements and to provide for public safety, to perform the construction between said hours. The town manager shall have the authority to approve the operation of the construction equipment that may generate said noise. In considering the granting, conditioning, or denial of the permit, the town manager shall be guided by the following standards: (i) significant impact to businesses; (ii) pedestrian safety; (iii) traffic volume and traffic control safety; (iv) staff to endeavor to avoid night construction if possible; and (v) staff will notify affected businesses and residents are properly notified in advance prior to construction.

ki. *Pneumatic hammer, chain saw, etc.* The operation between the hours of 10:00 p.m. and 6:30 a.m. of any chain saw, pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist, or other appliance unless as set forth in subsection [24-182\(11\)](#).

lj. *Animals.* In addition to the prohibition set forth in ch. 4, art. II, subsection [4-35\(6\)](#), the owning, keeping, or possessing of any animal or animals, which frequently or habitually howl, bark, meow, [and/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 dwelling units within a building, for a period of time exceeding 30 minutes past sundown, unless authorized by separate ordinance.

1. This subsection shall not apply to any bona fide agricultural activity as defined in the Code of Virginia, title 3.5, ch. 4.5, or to an emergency vehicle which causes noise in the performance of emergency work.

- (4) *Exceptions.* Subsections (3)a.—j. above shall have no application to any sound generated by any of the following:
- a. Sound which is necessary for the protection or preservation of property or the health, safety, life or limb of any person.
 - b. Public speaking and public assembly activities conducted on any public right-of-way or public property.
 - c. Radios, sirens, horns, and bells on police, fire, or other emergency response vehicles.
 - d. Parades, fireworks displays, school-related activities, and other such public special events or public activities.
 - e. Activities on or in municipal, county, state, United States, or school athletic facilities, or on or in publicly owned property and facilities.
 - f. Fire alarms, burglar alarms, and vehicle alarms, prior to the giving of notice and a reasonable opportunity for the owner or person in possession of the premises served by any such alarm to turn off the alarm, and if turned off within 30 minutes.

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- g. Religious services, religious events, or religious activities or expressions, including, but not limited to music, singing, bells, chimes, and organs which are a part of such service, event, activity, or expression.
- h. Locomotives and other railroad equipment, and aircraft.
- i. The striking of clocks.
- j. Military activities of the Commonwealth of Virginia or of the United States of America.
- k. Household tools, lawnmowers, and other lawn care equipment with manufacturer's recommended mufflers installed, between 7:00 a.m. and 10:00 p.m.
- l. Agricultural activities.
- m. Lawful discharge of firearms.

~~(5) Sound amplifying equipment—Registration.~~

- a. ~~Except as provided in subsection (4) of this section, no person shall use or cause to be used sound amplifying equipment in or over the town, unless such equipment is first registered with the town. Application for such registration shall be filed with the town manager at least 48 hours in advance of the use, and shall state the following, unless the element would not be applicable:~~
 - 1. ~~The name and address of the applicant.~~
 - 2. ~~The address of the place of business of the applicant.~~
 - 3. ~~The license number of any sound truck, or federal registration number of any aircraft, to be used by the applicant.~~
 - 4. ~~The name and address of the person who owns the sound amplifying equipment.~~
 - 5. ~~The name and address of the person having direct charge of the sound amplifying equipment.~~
 - 6. ~~The names and addresses of all persons who will use the sound amplifying equipment.~~
 - 7. ~~The location in the town in which sound amplifying equipment will be employed.~~
 - 8. ~~The proposed hours of operation, which shall not begin before 10:30 a.m. or extend past 8:00 p.m. of any day.~~
 - 9. ~~The proposed dates of operation.~~
 - 10. ~~A general description of sound amplifying equipment to be used.~~
- b. ~~The town manager shall return to the applicant for registration under this section one copy of a complete application filed pursuant to subsection (5)a. This copy shall be considered as a certificate of registration, shall be filed in the office of the town clerk, shall be in the possession of the person operating the sound amplifying equipment, and shall be promptly displayed and shown to any police officer of the town upon request.~~
- e. ~~In case of an emergency, or other circumstance calling for the immediate use of sound amplifying equipment, so that the 48-hour deadline set out in subsection (5)a. cannot be met, the town manager may waive the deadline using the following standards as applicable; the intensity or immediacy of the emergency or circumstance; lack of alternate~~

AN ORDINANCE: TO ADD AND AMEND TOWN CODE CHAPTER 24 (OFFENSES MISCELLANEOUS PROVISIONS); ARTICLE v (OFFENSES AGAINST PEACE AND ORDER); DIVISION 1 (GENERALLY) SECTION 24-182 (DECLARATION OF POLICY)

~~means of applicant's accomplishing the same goals by complying with the deadline; and avoidance of nullifying the deadline by a repeated course of conduct. The waiver shall be in writing, shall address these standards as applicable, and shall be filed in the office of the town clerk.~~

(56) *Other enforcement.*

- a. Instead of the criminal enforcement of this chapter, the town may bring a suit for injunction, abatement, or other appropriate civil relief to remedy, correct, or abate excessive noise.
- b. Citizens of the town believing that excessive noise constituting a public nuisance exists may utilize the procedure set forth in Code of Virginia (1950), § 48-1 et seq., as amended, or any other legal civil or criminal remedies that may be available to them.

The Council of the Town of Leesburg in Virginia hereby ordains:

SECTION II. All prior ordinances in conflict herewith are hereby repealed.

SECTION III. Severability. If a court of competent jurisdiction declares any provision of this ordinance invalid, the decision shall not affect the validity of the ordinance as a whole or any remaining provisions of the Leesburg Town Code.

SECTION IV. This ordinance shall be effective upon its adoption.

PASSED this _____ day of _____, 2014.

Kristen C. Umstattd, Mayor
Town of Leesburg

ATTEST:

Clerk of Council