



**Date of Council Meeting:** April 7, 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:** On March 25, 2014, Town staff presented a proposal for an amended Noise Ordinance. After the meeting, staff put together information related to the new ordinance to help explain the changes and posted to the website. An information sheet that provides a pertinent comparison of the current ordinance and the proposed ordinance is attached (Attachment1).

Since public interest in the new ordinance has been growing, staff is hosting a community meeting on Monday, April 7 in the Rose Garden of Town Hall, in order to provide a demonstration of decibels over various distances. Staff will be setting up music and a PA system, as one might find at an outdoor music venue, while establishing defined distances at which decibels can be measured. Should the Council direct, we could establish more opportunities for public input and demonstration.

In addition, staff attended the Economic Development Commission (EDC) meeting on April 2, at which the topic of the noise ordinance was discussed. As a result of the discussion, the EDC made a motion to “request Leesburg Town Council defer their vote on the noise ordinance until after the Town facilitated sound test (April 7) and a facilitated Town meeting has taken place with businesses and residents that provides a level of educated information, and return the collected information to Town Council in time for their first meeting in May.”

There have been some areas of the ordinance that staff has still been evaluating, as described at the Public Hearing on March 25. The foremost of which is that the proposed ordinance amendment does not establish a decibel limit standard within commercial areas as it affects other commercial areas during the hours that we have proposed to relieve said commercial areas of the plainly audible standard while establishing a maximum decibel standard as commercial affects residential. The staff group working on the ordinance has determined that the only practical way to regulate noise from one commercial venue to another outside of the plainly audible standard would be the establishment of a decibel standard measured from the property line of the property receiving noise.

In the absence of a decibel standard, it would be incumbent upon business owners that find themselves at odds with each other to cooperate and find balance. Otherwise a decibel standard of some sort will have to be instituted.

It should be noted that the attached amended ordinance (Attachment 2) contains the following changes from the last draft as we conduct further evaluation:

- Residential area definition is clarified to include planned residential areas such as Crescent Place and Village at Leesburg.
- “Commercial areas” has been amended to prohibit excessive noise “inside the confines of a unit or building of another business” during the time that the plainly audible standards apply. Staff believes this needed to be clarified since the proposed amended ordinance only referred to dwellings in commercial areas.
- The ordinance was amended to add “town permitted events” to be an exception from the ordinance.

**Summary:**

The Council is being asked to answer the following questions:

1. Is there a desire to amend the current ordinance that has as its basis the “Plainly Audible” standard that applies town-wide?
2. If there is a desire to change the ordinance, is staff’s proposal of a hybrid ordinance acceptable? The features of which include:
  - a. Establishment of commercial and residential area standards
  - b. Alleviating the “plainly audible standard” in commercial districts from 8:00 a.m. to 10:00 p.m., Sunday through Wednesday, and 8:00 a.m. to 11:00 p.m. Thursday through Saturday
  - c. Creation of a “cannot exceed” standard of 70 decibels (db(A)) within the commercial areas as it affects a residential area.
  - d. Creation of a section that regulates gatherings of ten or more that create excessive noise, outside the use of mechanical means.
  - e. Eliminates the permitting requirement for sound amplifying equipment.
3. If a decibel limit per 2(c) above is desired, what should that decibel limit be?
4. If the ordinance is amended, should a decibel standard be created in commercial areas during the times that the “Plainly Audible” standard does not apply as it relates to business to business noise?

In any event, whatever the Council decides, staff believes that the permitting section referenced in 2(e) above in the current ordinance related to sound amplifying equipment should be amended to at least extend the time limitation of the current ordinance past 8:00 p.m., and specify that the permit is required only for outdoor amplification.

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Scott E. Parker, AICP  
Assistant Town Manager

Attachments:

1. Ordinance comparison
2. Proposed Ordinance (with amendments)
3. Jurisdiction comparison chart

Proposed Town of Leesburg Noise Ordinance Amendment  
Information Sheet

The Town of Leesburg is proposing an amendment to its current Noise Ordinance (Section 24-182). This information is provided to help understand the proposed changes.

Existing Ordinance:

- The current Town of Leesburg Noise ordinance is based on the “Plainly Audible” standard, and does not have decibel standards. Either method, or a combination of both, is used in Virginia to regulate sound and noise.
- The Plainly Audible standard is based on the following definitions within our Ordinance:
  - *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.
  - *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.
- Under this standard, per Section 24-182(3), if sound, generated from a variety of sources as listed in Section 24-182(3) is “plainly audible” at a distance of 50 feet, it is considered “excessive noise” and is considered a public nuisance, constituting a violation.
- This applies to residential and commercial areas with no distinction, regardless of the time of day.

Proposed ordinance:

- Section 24-182 will be amended to create distinction between residential and commercial areas.
- In residential areas, the plainly audible standard will still apply and not be changed.
- In commercial areas only, the plainly audible standard would not apply during the following days and times:
  - 8:00 a.m. and 10:00 p.m., Sunday through Wednesday
  - 8:00 a.m. and 11:00 p.m., Thursday through Saturday
- Outside of these times, the plainly audible standard would still apply in commercial areas.
- Creation of a decibel standard in commercial areas (during the times above when plainly audible does not apply) as it affects a residential area. Commercial areas would not be allowed to create noise that exceeds:
  - 70 dB(A) between 8:00 a.m. and 10:00 p.m. within a residential area
  - 55 dB(A) between 10:01 p.m. and 7:59 a.m. within a residential area

The decibel limit and times above as proposed applies only to noise from a commercial area as it affects a residential area, not how one commercial area affects another commercial area.

- The decibel limit would be enforced by the Leesburg Police Department, utilizing a sound meter.

Other changes:

- The addition of Section 24-182 (d) to address noise generated by a gathering of ten or more people. The plainly audible section currently applies only 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...”

The staff report presented to Town Council at the Public Hearing of March 25, 2014 is attached here:

The Power Point shown to Town Council at the Public Hearing of March 25, 2014 is attached here:

The proposed Ordinance (with changes highlighted) is attached here:

For further information, please contact the Project Manager:

Scott E. Parker, AICP

Assistant Town Manager

[sparker@leesburgva.gov](mailto:sparker@leesburgva.gov)

703.771.2771

PRESENTED: April 8, 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) microwattons 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, in all residential zoning districts and residential areas of planned residential zoning district classifications, as set ~~forth~~ in the zoning ordinance.

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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, 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.

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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. Inside the confines of a unit or building of another business; or
3. Through the partitions common to two units within a building; or
4. At a distance of 50 feet or more from its source.
5. 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.

e. 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.

f. 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.

g. 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.

h. 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

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that is plainly audible within such school, court, public building, place of worship or hospital and interferes with the operation of the institution.

**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.

**ih.** *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 **including town-permitted events.**
- 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.~~
- ~~c. 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~~

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~~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. Umstatt, Mayor  
Town of Leesburg

ATTEST:

\_\_\_\_\_  
Clerk of Council

NOISE ORDINANCE COMPARISON			
JURISDICTION	RESIDENTIAL STANDARD	COMMERCIAL STANDARD	COMMENTS
Leesburg (currently)	Amplification=plainly audible across property boundary or 50 feet from building. ZO=55 d(B)A.	ZO=65 d(B)A	ZO cannot be enforced by police officers who must enforce at night. Town Code addresses residential noise, not commercial noise. Permit amplification ends at 8:00 p.m.
Alexandria	Amplification=11:00 pm. To 7:00 a.m. plainly audible 50 ft. from building and across boundary. 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 10 ft. from place of sound Still has permits.
Hanover	Day: 7 am to 10 pm 57 Night: 52	Day: 7 am to 10 pm 67 Night: 62	Crim and Civil penalties Over 90 d(B)A must post signs
Falls Church	Day: 75 Night: 70	Day and Night: 65	Sound is measured from "any point within any other property affected by the sound".
Arlington	Day: 74 Night: 55	74 day and night (regular commercial) 63 office	Measured from distance not less than 50 feet from noise source
Virginia Beach	Day: 7:00 a.m. to 10 pm: 65 Night: 55	Restaurants only: Day: 7am to 11pm: 80 Night: 75	Resid-measured inside 4 ft from wall with windows and door closed. Restaurant-measured from any public area
Williamsburg	<u>Outdoors</u> Day: 7 am to 11 pm: 65 Night: 55 <u>Indoors</u> Day: 55 Night: 50		
Frederick, MD	Day: 7 am to 10 pm: 65 Night: 10 pm. To 7 am: 55	Businesses licensed to serve alcohol cannot use amplification so that sound is plainly audible on a residential property and audible at	Regular commercial: Day: 67 Night: 62

		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.