



Date of Council Meeting: September 22, 2014

**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?

Recommendation: In order to come closer to a compromise solution on amending the Town Noise Ordinance to meet the needs and expectations of residents and business alike, Town staff is proposing the elimination of the sound registration section of the ordinance and replacing it with a permit for outdoor music.

Background: On March 25, 2014, Town staff presented a proposal for an amended Noise Ordinance that would have changed the current standard of “plainly audible” to one that is a decibel based system. Since then, there have been various discussions regarding the change of the ordinance. At its meeting of April 21, 2013, the Council decided to allow the current ordinance to stand through the summer, with the goal of business cooperation that would lead to fewer complaints and perhaps alleviating the need to change the noise ordinance to a new decibel based system.

As part of this effort, staff has pro-actively coordinated efforts for compliance through the existing “sound equipment registration” procedure that is part of the current ordinance. Staff has had the ability to meet with the few businesses that regularly engage in outdoor music that require a permit to discuss concerns, evaluate the type of music and amplification systems, and to counsel on the negative effects of a noise complaint.

The table below contains the reported loud noise/music calls for service (CFS) from May 1 to August 30, 2014:

Location	Count	Issue
Barber & Ross	1	construction related activities
Cornwall ER	2	exterior painters in the parking lot
Doner Bistro	1	music
Douglass Community Center	6	music form pavilion
Fire Department	2	music from the Flame Room
Madison house	2	residents slamming doors
Safeway	1	parking lot sweeper
Thomas Birkby House	1	cheerleaders practicing outside at night

Staff Analysis and Recommendations

Registration Process

With respect to the registration process for amplified music, staff believes changes are needed. Currently, Section (5) *Sound amplifying equipment - Registration* states 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.” This language implies that the registration is applicable to all sound equipment, both inside and outside. For practical reasons, the Town has not been requiring registration of sound equipment inside a business or residence. In addition, since the permitting is for amplified sound only, large orchestras or other such music that is not amplified that could be just as impactful are not required to obtain a registration. In this scenario, the plainly audible standard would apply, since they do not have a registration.

It should also be noted that the Town Attorney’s office has determined that if a sound equipment registration is granted, then the plainly audible section of the ordinance does not apply, in that the registration is considered an exception to the ordinance. Currently, outdoor amplification via registration is allowed only between the hours of 10:30 a.m. and 8:00 p.m.

Based on this information, staff is proposing the following changes to the Ordinance:

1. Section 24-182 (5) Sound Amplifying Equipment shall be removed in its entirety. Staff believes it is awkward in the administration and regulation of outdoor music. This has been this section’s primary function, and staff does not believe that there will be any injurious effects from its removal, in that other potential applications of this section, such as mobile loudspeakers, are covered in other sections of the Ordinance.
2. Staff is proposing a new Section 24-182 (5) as follows:

Permit for Outdoor Music.

- a. Except as provided in subsection (4) of this section, no person shall permit outdoor music in the town, unless a permit has been issued by the town manager or his designee. Application for such permit shall be filed with the town manager at least 48 hours in advance of the use. No permit shall be issued for outdoor music beyond the hours of Friday from 12:00 p.m. to 10:00 p.m., and/or Saturday from 12:00 p.m. to 10:00 p.m. and/or Sunday from 12:00 p.m. to 6:00 p.m.
- b. The town manager shall return to the applicant under this section a Permit for Outdoor Music which shall contain the conditions of the permit including those conditions which may result in revocation of the permit.. The Permit for Outdoor Music, shall be displayed at the location of the outdoor music and must be shown to any police officer of the town upon request.
- c. Any person who has obtained a Permit for Outdoor Music and who allows sound in excess of 65 dB(A) when measured from any property boundary shall be subject to revocation of the Permit for Outdoor Music.

This permit will be for any and all outdoor music in the Town. The proposed permit will be in a form approved by the Town Manager, and information required for this new permit will include, but not necessarily be limited to:

- Requirement for name and address of said music
- Permit must be signed by Town Manager or designee
- Permits will not be granted for more than 30 days
- Person responsible for music at the residence/establishment must be identified
- Permission and/or signature of the property owner
- Type of equipment to be used
- Requirement of 48 hour notice for permitting
- Requirement that all Town taxes and fees must be paid in full. Delinquency could result in denial of application
- Enforcement mechanisms
- Hours of applicability

The major aspects of this permit are the time frames established and the creation of a decibel standard applicable to the holder of a permit. Other aspects related to enforcement would include:

- Any person who has obtained a Permit for Outdoor Music and who allows sound in excess of 65 dB(A) when measured from any property boundary shall be subject to revocation of the Permit for Outdoor Music. Staff has concluded that a decibel limit at a property line of a complainant is more practical than at the source, and avoids the possibility of complaints generated from extreme distances from the source.
- Either the Town Manager, or designee, or a member of the Leesburg Police Department (known as the Town) may revoke an Outdoor Music permit when the sound (and any additional sound or noise attenuating the music) is found by complaint to the Leesburg Police Department to violate the 65dBa section.
- Any person or business whose Outdoor Music permit has been revoked cannot apply for another permit for 30 days.
- More than three (3) revocations by the Town in a one-year period shall prohibit any person or business from applying for an Outdoor Music Permit for one (1) year.
- Any permit granted is at the discretion of the Town Manager or their designee, and they will reserve the right to deny any application due to conflicts with existing permits issued, past enforcement activities, etc.

It should be noted that this approach will require the purchase of decibel equipment suitable for law enforcement purposes. Training in the use of this equipment will be required. It should also be noted that this approach removes the penalty from the criminal section and places it in civil remedies, thus allowing the Town more flexibility to deal with individual circumstances. In the event there is no permit, a permit is revoked, or outdoor music is engaged in outside of the

prescribed hours, the Plainly Audible section, as well as its accompanying criminal enforcement, shall still be effect. It is anticipated that the current practice of law enforcement to gain compliance by a warning would still be the practice before the revocation of a permit.

Summary

In conclusion, Town staff believes that the approach to institute a permitting procedure specific to outdoor music creates the best balance between reasonable business needs and resident expectations. It fosters the ability to provide outdoor entertainment, while also prescribing remedies for residents and other businesses that may be adversely affected.

Should the Council decide to proceed in this direction, Staff will present a motion to initiate another public hearing on the matter at a future date of Council's discretion.

Attachments:

1. Proposed Sound and Noise Ordinance

Sec. 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, and outdoor music 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.

~~(1) (4)~~—*Definitions.* The following words, when used in this chapter, shall have the following respective meanings, unless the context clearly indicates a different meaning:

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

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 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.

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- (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 which produces, reproduces or amplifies sound:
 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.
 - c. *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.
 - d. *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-time~~ limitation of this subsection may be granted by the town council through a ~~fireworks-special events~~ permit.
 - e. *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.
 - f. *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.
 - g. *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.
 - h. *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.

- i. *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(44)(a).
 - j. *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.
- 4- 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.

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(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.
- 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.

~~n. Any sound generation which occurs in reliance upon a permit issued by the town manager pursuant to §§ 24-182(5).~~

(5) *Permit for Outdoor Music Sound-amplifying equipment—Registration.*

- a. Except as provided in subsection (4) of this section, no person shall ~~use or cause to be used- cause, play or permit outdoor music~~ sound-amplifying equipment in or over in the town, unless a permit has been issued by the town manager or his designee, which permit may be issued in the town manager's sole discretion ~~such equipment is first registered with~~

~~the town.~~ Application for such ~~permit~~ 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.~~ No permit shall be issued for outdoor music beyond the hours of Friday from 12:00 p.m. to 10:00 p.m., and/or Saturday from 12:00 p.m. to 10:00 p.m. and/or Sunday from 12:00 p.m. to 6:00 p.m.

- ~~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. ~~If in the town manager's sole discretion, a Permit for Outdoor Music is issued, the town manager shall return to the applicant for registration under this section a copy of the permit which shall contain the conditions thereof including those conditions which may result in revocation of the permit, one copy of a complete application filed pursuant to subsection (5)a. The Permit for Outdoor Music's 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 at the location of the outdoor music and must be 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 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.~~
- c. Any person who has obtained a Permit for Outdoor Music and who allows sound in excess of 65 dB(A) when measured from any property boundary shall be subject to revocation of the Permit for Outdoor Music.

~~(6)~~ *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.

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~~(Code 1976, § 11-17; Ord. No. 90-0-4, § 1, 2-13-1990; Ord. No. 2008-0-2, § 1, 2-12-2008; Ord. No. 2009-0-016, § 1, 10-14-2009)~~