



Date of Council Meeting: January 26, 2015

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: Sound and Noise Ordinance

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

Council Action Requested: Councilman Butler has requested a discussion on the topic.

Staff Recommendation: None. Analysis and staff recommendation will be dependent upon direction provided by Council.

Commission Recommendation: Not applicable

Fiscal Impact: Analysis to be determined based on direction of Council.

Executive Summary: In the summer of 2014, the Town Council last considered whether to change or amend the current Leesburg Sound and Noise ordinance. No direction was given to change the ordinance so the current ordinance (Attachment 1) has remained in full force and effect.

The current Leesburg Ordinance is based on a “per se” plainly audible standard. This standard is based on the premise that if a sound is plainly audible to unaided hearing faculties, and is disturbing, it is considered excessive noise and a violation.

Per the request of Councilman Butler, the attached draft sound ordinance is provided for Council review and discussion. This draft proposes a decibel based approach to the ordinance which establishes decibel levels for various times of the day (Attachment 2).

Attachment:

- 1) Current Leesburg Sound and Noise Ordinance
- 2) Proposed Sound 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, 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) *Definitions.* The following words, when used in this chapter, shall have the following respective meanings, unless the context clearly indicates a different meaning:

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.

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.
 - 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 limitation of this subsection may be granted by town council through a fireworks 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(11).
 - 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.
 - 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.
 - 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 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.
- (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.

(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-O-016, § 1, 10-14-2009)

Sec. 24-182 – Excessive Sound Ordinance.

At certain levels, sound can be detrimental to the health, welfare, safety and quality of life of inhabitants of the town, and in the public interest sound should be restricted. It is, therefore, the policy of the town to reduce, and eliminate where possible, excessive and extreme sound and related adverse conditions in the community, and to prohibit unnecessary, excessive, harmful, and annoying sounds from all sources subject to its police power.

(1) **Definitions.** The following words, when used in this chapter, shall have the following respective meanings.

- a. *Construction Activities* means the erection including excavation, demolition, alteration or repair of any building, street, public facility or improvement.
- b. *Daytime hours* means the period each day in the following matrix:

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Start	9:00 am	7:00 am	7:00 am	7:00 am	7:00 am	7:00 am	9:00 am
End	9:00 pm	9:00 pm	9:00 pm	9:00 pm	10:00 pm	11:00 pm	11:00 pm

- c. *dBA* means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. S. dBA is designed to emphasize frequencies that could potentially damage the hearing of a typical human. It is most sensitive to mid-range frequencies.
- d. *dBC* means the sound pressure level in decibels as measured on a sound level meter using the C-weighting network. dBC is more sensitive to low frequencies than dBA. It more effectively captures the perception of loudness for bass tones and other, often annoying frequencies that are felt but not always heard.
- e. *Emergency* means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which may demand immediate curative or corrective action.
- f. *Event* means outdoor gatherings of persons, outdoor concerts, outdoor parades, outdoor festivals and outdoor private parties.
- g. *Excessive sound* means sounds that exceeds 55 dBA or 55 dBC during *nighttime hours* and sound that exceeds 75 dBA or 75 dBC during *daytime hours* when measured across a residential real property boundary, across a commercial property boundary, or inside of a structure.
- h. *Extreme sound* means sound that exceeds sound levels in Permissible Noise Exposures of the federal Occupational Safety and Health Administration standard 29 CFR 1926.52(d)(1) Table D-2.
- i. *Government* means a municipal, county, state, or federal, facility, or on or in publicly owned property and facilities.
- j. *Nighttime hours* means all hours that are not defined as *daytime hours*.
- k. *School* means a public or private school for elementary, middle or high school grades or an institution of higher education offering postsecondary degrees as a college or university.

- l. *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.
 - m. *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.
 - n. *Sound pressure level* means the weighted sound pressure level obtained by the use of the sound level meter and the A-frequency weighting network, as specified in the American National Standards Institute specifications for sound level meters.
- (2) **Prohibition:** Except as provided or permitted pursuant to subsections (4), (5), or (6) in this chapter, no person shall cause, or permit to be caused, excessive sound at any point within the property of another person or business. Violations are subject to penalties pursuant to subsection (7) in this chapter.
- (3) **Extreme sound:** As extreme sounds are considered unsafe and harmful to a person's hearing, at no time shall any person cause, or permit to be caused, extreme sound at any point within the property of another person or business. Violations are subject to penalties pursuant to subsection (7) in this chapter.
- (4) **Exceptions:** Subsection (2) of this chapter shall have no application to any sound generated by any of the following:
- a. Activities for which the regulation of sound has been preempted by state or federal law.
 - b. Emergencies, or potential emergencies, including alerting people to the existence of an emergency, the performance of emergency work, fire alarms, burglar alarms, and vehicle alarms.
 - c. Snow removal equipment.
 - d. The lawful discharge of firearms.
 - e. Activities authorized by a permit issued pursuant to subsection (6) of this code.
 - f. Bona fide agricultural activities.
 - g. Bells and carillons.
- (5) **Daytime hours exceptions:** Subsection (2) in this chapter shall have no application to any sound generated by any of the following during daytime hours.
- a. Activities sponsored and scheduled by a school or governmental entity.
 - b. Gardening, lawn care, tree maintenance or removal, or other landscaping activities with manufacturer's recommended mufflers installed.
 - c. Construction Activities.

(6) Permits: Allowance for temporary exception to subsection (2) of this chapter.

- a. An application for a permit to temporarily cause excessive sound during an event or construction activities, may be filed with the town manager. Such a permit, if approved at the manager's discretion, allows exception to subsection (2) of this chapter for the duration of the event.
- b. The application must be filed with the town manager at least 48 hours in advance of the event, and shall state the following, unless the element would not be applicable.
 - i. Name and address of the applicant.
 - ii. Address of the place of business of the applicant.
 - iii. License number of any sound truck, or federal registration number of any aircraft, to be used by the applicant.
 - iv. Name and address of the person in direct charge of the event.
 - v. The location of the event.
 - vi. The hours of the event.
 - vii. The proposed date(s) of the event and whether the event will be recurring.
 - viii. A general description of the event.
- c. The town manager shall, if approved with or without appropriate conditions, return to the applicant for permit under this section one copy of a complete application filed pursuant to subsection (6)b of this chapter. 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 in direct charge of the event, and shall be promptly displayed and shown to any police officer of the town upon request.

(7) Violations of this chapter

- a. A violation of this chapter shall constitute a Class 4 misdemeanor and be subject to fines and other penalties associated with this violation.
- b. A second violation of this chapter within any twelve-month period shall constitute a Class 3 misdemeanor and be subject to fines and other penalties associated with this violation.
- c. A third or subsequent violation of this chapter within any twelve-month period shall constitute a Class 2 misdemeanor and be subject to fines and other penalties associated with this violation.
- d. In addition to the penalties prescribed above, the town may bring a suit for injunction, abatement, or other appropriate civil relief to remedy, correct, or abate excessive sound.

(8) **Severability:** A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section, or part of this chapter shall not affect the validity of the remaining parts thereto.