

**TOWN OF LEESBURG
NOTICE OF PUBLIC HEARING**

**TO CONSIDER THE FOLLOWING ADDITIONS/AMENDMENTS
TO THE LEESBURG TOWN CODE:**

**CHAPTER 24 (OFFENSES AND MISCELLANEOUS PROVISIONS), ARTICLE V
(OFFENSES AGAINST PUBLIC PEACE AND ORDER), DIVISION I (GENERALLY)**

**NEW SECTION 24-186 ALCOHOL PROHIBITED ON PUBLIC PROPERTY;
EXCEPTIONS FOR OUTDOOR DINING, SPECIAL EVENTS, ETC.**

Pursuant to Code of Virginia of 1950, as amended, §§ 15.2-1427, 18.2-388, 15.2-2001, **THE LEESBURG TOWN COUNCIL** will hold a public hearing on **Tuesday, January 26, 2016, at 7:30 p.m.**, in the Council Chambers at Town Hall, 25 West Market Street, Leesburg, Virginia, 20176, to consider the following Town Code Amendments regarding permitting the service and consumption of alcohol on designated areas of town sidewalks, streets and public facilities under certain limited circumstances and when issued a special events permit by the Town.

The following Town Code amendments are proposed:

NEW Section 24-186. Alcohol prohibited on public property; exceptions for outdoor dining, special events, etc.

If any person takes a drink of alcoholic beverages or offers a drink thereof to another, whether accepted or not, at or on any public property, he shall be guilty of a misdemeanor.

(1) This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in a designated area of public sidewalk if:

(a) The designated area of public sidewalk is approved by the state alcoholic beverages control board and adjacent to a licensed establishment, provided such establishment or the person who operates the same is licensed to sell alcoholic beverages at retail for on-premises consumption and the alcoholic beverages drunk or offered were purchased therein;

(b) A permit has been issued by the town to allow the licensed establishment to sell alcoholic beverages in the designated area of public sidewalk.

(c) The designated area of public sidewalk shall be adjacent to the property of an existing and lawfully operating licensed establishment, and outdoor dining shall be under the responsible direction and control of such establishment.

(2) This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in a designated area of the following public properties: the Thomas Balch Library, the Leesburg Executive Airport, the Loudoun Museum Buildings, and Leesburg Town Hall if:

(a) The designated area of town property is approved by the state alcoholic beverages control board;

(b) A special event permit has been issued by the town to allow the service and consumption of alcoholic beverages in the designated area of the town property or facility.

(3) This section shall not prevent a person from drinking alcoholic beverages or offering a drink thereof to another in a designated area of public right of way if:

(a) The designated area of public right of way is approved by the state alcoholic beverages control board;

(b) A special event permit has been issued by the town to allow the service and consumption of alcoholic beverages in the designated area of public right of way;

(c) Special event permits will be issued by the town only for town-sponsored events or town-supported events or for private special events that are open to the public and for which no fee is charged. For this section only, town-sponsored events are events planned and coordinated by the town and town-supported events are those events where the town council has resolved to provide financial support to the event which shall include the waiving of fees of any kind.

(d) No special event permit to allow the service and consumption of alcoholic beverages shall be issued for public right of ways in residential districts with the exception of the downtown area of the H-1 Historic District.

(4) This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in any park and recreation area designated by the town council in section 26-26(b) and in accordance with the Rules and Standard Operating Procedures Regarding Alcohol Use at Town Facilities and Town Produced Events which is incorporated herein by reference.

A copy of the proposed ordinance is available from the Town Clerk, located in Town Hall. Additional information regarding these proposed amendments is available in the Executive Department, located on the first floor of the Leesburg 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, 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.



Date of Council Meeting: January 26, 2016

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: Town Code Amendment permitting alcohol on designated sidewalks, public right of way, town parks and facilities

Staff Contact: Barbara Notar, Town Attorney
Keith Markel, Deputy Town Manager
Marantha Edwards, Economic Development Manager
Kate Trask, Deputy Director of Parks and Recreation
Charlie Mumaw, Deputy Director of Public Works and Capital Projects
Alexandra Gressitt, Director of Thomas Balch Library
Scott Coffman, Airport Manager
Captain Carl Maupin, Leesburg Police Department

Council Action Requested: Amend the Town Code to establish a town-issued permit process that authorizes the service and consumption of alcohol on designated areas of town sidewalks, parks and town-owned facilities.

Additionally, Council is asked to decide whether town streets within commercial districts and the H-1 historic district be permitted to be closed for town-sponsored, town-supported or privately sponsored events where alcohol can be served and consumed subject to a town-issued permit.

Staff Recommendation: Town staff supports the establishment of town-issued permit process that authorizes the service and consumption of alcohol on town sidewalks, parks and recreation facilities and certain town-owned facilities in designated areas and under circumstances which can be controlled and monitored by town staff and/or the event sponsor.

Town staff recommends that a minimum 5 feet pedestrian sidewalk be available that is free from any obstructions where outdoor dining is permitted. While the American with Disabilities Act (ADA) generally authorizes a 4 feet minimum pathway measured from the inside of the curb to the dining area, town staff recommends 5 feet as this is the area of passage permitted in other localities (Richmond, Alexandria), and town staff found this to be a reasonable amount of area for both strollers and wheelchairs to pass.

The Department of Parks and Recreation staff believes that the park areas where alcohol is permitted should be expanded as a result of the many requests received from the public to hold events which serve alcohol in designated areas of certain town parks and recreational facilities. The department supports adding the following parks and recreation

areas to those areas where alcohol is permitted: the Festival Field at Ida Lee Park, the Leesburg Green, and Mervin Jackson Park (which includes the Rose Garden). A special event application will be required along with an ABC permit, police presence, and insurance covering the Town. They also support the expansion of the type of alcohol that can be served. Currently only beer and wine is permitted.

Additionally, the Department of Parks and Recreation, in reaction to the many requests to use town streets within the downtown for events where alcohol is served, supports the use of town streets for town-sponsored, town-supported and private events. Any private or town-supported event sponsor would be required to file an application with the Town, pay the fee that is in place for rentals of current park properties, and complete all permit requirements.

Commission Recommendation: The Airport Commission, Parks and Recreation Commission, and the Thomas Balch Library Commission have been asked to provide input on this issue. The Economic Development Commission is expected to submit recommendations at its February meeting:

1. The Airport Commission: The members support permitting alcohol in the terminal and throughout the airport with a town-issued permit and subject to ABC licensure.
2. The Parks and Recreation Commission: Parks and Recreation staff favors expanding the permitting of alcohol in additional parks and recreation areas as well as expanding the type of alcohol permitted.
3. The Thomas Balch Library Advisory Commission discussed use of alcohol on site but failed to reach a conclusion desiring additional information as to its effect on library operations. The preliminary discussion point was that the Library is a research center and use of alcoholic beverages has never been requested and compromises the mission of the library as a facility housing special and invaluable materials. The ability to serve wine only could be an option for town-sponsored events but the prohibition should remain for public events.

Fiscal Impact: Minimal, as no new additional fees are recommended or suggested. There is currently a \$100 fee for a right of way permit which can be extended to outdoor dining permits for sidewalks and a special event application fee for use of town parks, streets and facilities.

Work Plan Impact: Staff anticipates that the work plan impact will be minimal. A staff member currently issues right of way permits for those working within town sidewalks and streets and the additional duties of issuing permits for sidewalk dining and special events will be absorbed by this staff member and special events staff from the Department of Parks and Recreation. Department of Parks and Recreation staff will also assist with permits for special events in town right of way, parks and town-owned facilities.

Executive Summary: As a result of the widening of the sidewalks on South King Street, Council initiated amendments to the Town Code to authorize outdoor dining on the sidewalk including the service and consumption of alcohol in designated areas. During discussion of the initiating resolution, Council also asked staff to propose amendments to the Town Code which would broaden the town-owned facilities where alcohol could be served and consumed as well as expanding the type of alcohol that could be served. Currently, only beer and wine is permitted in the Ida Lee Park Recreation Center, the Ida Lee Park Tennis Center, and the Olde Izaak Walton Park Building.

Additionally, town staff has asked Council to decide whether event sponsors may ask that streets within commercial districts and the H-1 Historic District be permitted to be closed for events where alcohol could be served and consumed. Streets may be closed for town-sponsored, town-supported or for private event sponsors, but only with a town-issued permit. Sidewalks must be open to the public during any private event and alcohol could also be served and consumed during these events and only in designated areas.

Background: With the widening of the sidewalk on South King Street as part of the Downtown Improvement Project, several restaurants have inquired as to whether they will be able to serve alcohol on designated areas of the town sidewalks. Currently, the Town Code prohibits the service and consumption of alcohol on town streets and sidewalks other than under very limited circumstances (property/ROW adjacent to 19 West Market Street (Tally Ho Taco, formerly LaLou's) and 202 Harrison Street, SE (MacDowell Brew Kitchen).

On December 8, 2014, Town Council initiated Town Code amendments to expand the areas where alcohol can be served on town sidewalks and town-facilities in areas designated by the Alcohol Beverage Control Board and with a town-issued permit. Town staff has also requested that the Council consider authorizing the service of alcohol on town streets during town-supported, town-sponsored and private special events so long as a permit has been issued, the public is invited and the sidewalks are open to pedestrian traffic.

Attachments:

- 1) Proposed Ordinance

PRESENTED: January 26, 2016

ORDINANCE NO. _____

ADOPTED: _____

AN ORDINANCE: TO AMEND AND REORDAIN, CHAPTER 24 (OFFENSES AND MISCELLANEOUS PROVISIONS), ARTICLE V (OFFENSES AGAINST PUBLIC PEACE AND ORDER), DIVISION 1 (GENERALLY), SECTION 24-184 (PUBLIC PROFANITY AND INTOXICATION) OF THE LEESBURG TOWN CODE BY ADDING NEW SECTIONS, 24-185 (CONSUMPTION OR SERVICE OF ALCOHOL WITHOUT LICENSE) AND 24-186 (ALCOHOL PERMITTED ON PUBLIC PROPERTY; EXCEPTIONS FOR OUTDOOR DINING, SPECIAL EVENTS, ETC.), TO ALLOW ALCOHOL TO BE SERVED AND CONSUMED ON DESIGNATED AREAS OF PUBLIC PROPERTY UNDER LIMITED CIRCUMSTANCES AND WHEN ISSUED AN OUTDOOR DINING OR SPECIAL EVENT PERMIT BY THE TOWN

WHEREAS, as a result of the Town's Downtown Improvement Capital Project's expanded sidewalks and streetscape improvements, restaurants located within the Town request permission to use the Town's sidewalks for outdoor dining to include the service and consumption of alcohol; and

WHEREAS, the Town has received an increased number of requests from the public to use Town parks and recreation areas and Town facilities to hold special events which include alcohol; and

WHEREAS, the Town Code prohibits the service and consumption of alcohol on Town sidewalks, town right of way and town-owned facilities other than in limited areas; and

WHEREAS, the Town Council desires to offer town residents and business owners a uniform and standard process to apply for an outdoor dining or special event permit to use town sidewalks, streets and facilities where alcohol is served and consumed and the Town Code must be amended to reflect this process.

THEREFORE, ORDAINED by the Town Council of the Town of Leesburg, Virginia:

AN ORDINANCE: TO AMEND AND REORDAIN, CHAPTER 24 (OFFENSES AND MISCELLANEOUS PROVISIONS), ARTICLE V (OFFENSES AGAINST PUBLIC PEACE AND ORDER), DIVISION 1 (GENERALLY), SECTION 24-184 (PUBLIC PROFANITY AND INTOXICATION) OF THE LEESBURG TOWN CODE BY ADDING NEW SECTIONS, 24-185 (CONSUMPTION OR SERVICE OF ALCOHOL WITHOUT LICENSE) AND 24-186 (ALCOHOL PERMITTED ON PUBLIC PROPERTY; EXCEPTIONS FOR OUTDOOR DINING, SPECIAL EVENTS, ETC.), TO ALLOW ALCOHOL TO BE SERVED AND CONSUMED ON DESIGNATED AREAS OF PUBLIC PROPERTY UNDER LIMITED CIRCUMSTANCES AND WHEN ISSUED AN OUTDOOR DINING OR SPECIAL EVENT PERMIT BY THE TOWN

SECTION I. That Chapter 24, Article V, Division 1, Section 24-184 of the Town Code of Leesburg, Virginia, 2009, as amended, be and the same is hereby amended to read as follows:

Sec. 24-184. Public profanity and intoxication.

(a) If any person profanely curses or swears or is intoxicated in public, whether such intoxication results from alcohol, narcotic drug or other intoxicant or drug of whatever nature, he shall be deemed guilty of a misdemeanor. In any area in which there is located a court-approved detoxification center a law enforcement officer may authorize the transportation, by police or otherwise, of public inebriates to such detoxification center in lieu of arrest; however, no person shall be involuntarily detained in such center.

~~(b) If any person takes a drink of alcoholic beverages or offers a drink thereof to another, whether accepted or not, at or in any public place, he shall be guilty of a misdemeanor.~~

~~(c) This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in any rooms or areas approved by the state alcoholic beverage control board in a licensed establishment, provided such establishment or the person who operates the same is licensed to sell alcoholic beverages at retail for on-premises consumption and the alcoholic beverages drunk or offered were purchased therein.~~

~~(d) This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in any room or area approved by the board at an event for which a banquet license or mixed beverage special events license has been granted. Nor shall this section prevent, upon authorization of the licensee, any person from drinking his own lawfully acquired alcoholic beverages or offering a drink thereof to another in approved areas and locations at events for which a coliseum or stadium license has been granted.~~

~~(e) This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in a designated area of town property known as the Leesburg Town Green or a designated area of public sidewalk right of way adjacent to Harrison Street between Royal Street and South Street if:~~

~~(1) The designated area is approved by the state alcoholic beverages control board and adjacent to a licensed establishment, provided such establishment or the person who operates the same is licensed to sell alcoholic beverages at retail for on-premises consumption and the alcoholic beverages drunk or offered were purchased therein;~~

AN ORDINANCE: TO AMEND AND REORDAIN, CHAPTER 24 (OFFENSES AND MISCELLANEOUS PROVISIONS), ARTICLE V (OFFENSES AGAINST PUBLIC PEACE AND ORDER), DIVISION 1 (GENERALLY), SECTION 24-184 (PUBLIC PROFANITY AND INTOXICATION) OF THE LEESBURG TOWN CODE BY ADDING NEW SECTIONS, 24-185 (CONSUMPTION OR SERVICE OF ALCOHOL WITHOUT LICENSE) AND 24-186 (ALCOHOL PERMITTED ON PUBLIC PROPERTY; EXCEPTIONS FOR OUTDOOR DINING, SPECIAL EVENTS, ETC.), TO ALLOW ALCOHOL TO BE SERVED AND CONSUMED ON DESIGNATED AREAS OF PUBLIC PROPERTY UNDER LIMITED CIRCUMSTANCES AND WHEN ISSUED AN OUTDOOR DINING OR SPECIAL EVENT PERMIT BY THE TOWN

~~(2) A permit has been issued by the town manager or designee to allow the licensed establishment to encroach upon town property;~~

~~(3) The designated area shall be adjacent to the property of an existing and lawfully operating licensed establishment, and outdoor dining shall be under the responsible direction and control of such establishment;~~

~~(4) The licensed establishment or the person who operates the same enters into a memorandum of agreement with the town which sets forth the requirements for the drinking and offering of alcoholic beverages in the designated area. Said memorandum of agreement must be approved by the town council.~~

SECTION II. That a new section should be added to Chapter 24, Article V, Division 1, of the Town Code of Leesburg, Virginia, 2009:

Section 24-185. (Consumption or Service of Alcohol without License)

(a) If any person takes a drink of alcoholic beverages or offers a drink thereof to another, whether accepted or not, at or in any public place, he shall be guilty of a misdemeanor.

(b) This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in any rooms or areas approved by the state alcoholic beverage control board in a licensed establishment, provided such establishment or the person who operates the same is licensed to sell alcoholic beverages at retail for on-premises consumption and the alcoholic beverages drunk or offered were purchased therein.

(c) This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in any room or area approved by the board at an event for which a banquet license or mixed beverage special events license has been granted. Nor shall this section prevent, upon authorization of the licensee, any person from drinking his own lawfully acquired alcoholic beverages or offering a drink thereof to another in approved areas and locations at events for which a coliseum or stadium license has been granted.

SECTION III. That a new section should be added to Chapter 24, Article V, Division 1 of the Town Code of Leesburg, Virginia to read as follows:

AN ORDINANCE: TO AMEND AND REORDAIN, CHAPTER 24 (OFFENSES AND MISCELLANEOUS PROVISIONS), ARTICLE V (OFFENSES AGAINST PUBLIC PEACE AND ORDER), DIVISION 1 (GENERALLY), SECTION 24-184 (PUBLIC PROFANITY AND INTOXICATION) OF THE LEESBURG TOWN CODE BY ADDING NEW SECTIONS, 24-185 (CONSUMPTION OR SERVICE OF ALCOHOL WITHOUT LICENSE) AND 24-186 (ALCOHOL PERMITTED ON PUBLIC PROPERTY; EXCEPTIONS FOR OUTDOOR DINING, SPECIAL EVENTS, ETC.), TO ALLOW ALCOHOL TO BE SERVED AND CONSUMED ON DESIGNATED AREAS OF PUBLIC PROPERTY UNDER LIMITED CIRCUMSTANCES AND WHEN ISSUED AN OUTDOOR DINING OR SPECIAL EVENT PERMIT BY THE TOWN

Sec. 24-186. Alcohol prohibited on public property; exceptions for outdoor dining, special events, etc.

If any person takes a drink of alcoholic beverages or offers a drink thereof to another, whether accepted or not, at or on any public property, he shall be guilty of a misdemeanor.

(1) This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in a designated area of public sidewalk if:

(a) The designated area of public sidewalk is approved by the state alcoholic beverages control board and adjacent to a licensed establishment, provided such establishment or the person who operates the same is licensed to sell alcoholic beverages at retail for on-premises consumption and the alcoholic beverages drunk or offered were purchased therein;

(b) A permit has been issued by the town to allow the licensed establishment to sell alcoholic beverages in the designated area of public sidewalk.

(c) The designated area of public sidewalk shall be adjacent to the property of an existing and lawfully operating licensed establishment, and outdoor dining shall be under the responsible direction and control of such establishment.

(2) This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in a designated area of the following public property: the Leesburg Executive Airport, if:

(a) The designated area of town property is approved by the state alcoholic beverages control board;

(b) A special event permit has been issued by the town to allow the service and consumption of alcoholic beverages in the designated area of the town property or facility.

(3) This section shall not prevent a person from drinking alcoholic beverages or offering a drink thereof to another in a designated area of public right of way if:

AN ORDINANCE: TO AMEND AND REORDAIN, CHAPTER 24 (OFFENSES AND MISCELLANEOUS PROVISIONS), ARTICLE V (OFFENSES AGAINST PUBLIC PEACE AND ORDER), DIVISION 1 (GENERALLY), SECTION 24-184 (PUBLIC PROFANITY AND INTOXICATION) OF THE LEESBURG TOWN CODE BY ADDING NEW SECTIONS, 24-185 (CONSUMPTION OR SERVICE OF ALCOHOL WITHOUT LICENSE) AND 24-186 (ALCOHOL PERMITTED ON PUBLIC PROPERTY; EXCEPTIONS FOR OUTDOOR DINING, SPECIAL EVENTS, ETC.), TO ALLOW ALCOHOL TO BE SERVED AND CONSUMED ON DESIGNATED AREAS OF PUBLIC PROPERTY UNDER LIMITED CIRCUMSTANCES AND WHEN ISSUED AN OUTDOOR DINING OR SPECIAL EVENT PERMIT BY THE TOWN

(a) The designated area of public right of way is approved by the state alcoholic beverages control board;

(b) A special event permit has been issued by the town to allow the service and consumption of alcoholic beverages in the designated area of public right of way;

(c) Special event permits will be issued by the town only for town-sponsored events or town-supported events or for private special events that are open to the public and for which no fee is charged. For this section only, town-sponsored events are events planned and coordinated by the town and town-supported events are those events where the town council has resolved to provide financial support to the event which shall include the waiving of fees of any kind.

(d) No special event permit to allow the service and consumption of alcoholic beverages shall be issued for public right of ways in residential districts with the exception of the downtown area of the H-1 Historic District.

(4) This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in any park and recreation area designated by the town council in section 26-26(b) and in accordance with the Rules and Standard Operating Procedures Regarding Alcohol Use at Town Facilities and Town Produced Events which is incorporated herein by reference.

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

SECTION V. 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 VI. This ordinance shall be effective upon its adoption.

PASSED this _____ day of _____, 2016

AN ORDINANCE: TO AMEND AND REORDAIN, CHAPTER 24 (OFFENSES AND MISCELLANEOUS PROVISIONS), ARTICLE V (OFFENSES AGAINST PUBLIC PEACE AND ORDER), DIVISION 1 (GENERALLY), SECTION 24-184 (PUBLIC PROFANITY AND INTOXICATION) OF THE LEESBURG TOWN CODE BY ADDING NEW SECTIONS, 24-185 (CONSUMPTION OR SERVICE OF ALCOHOL WITHOUT LICENSE) AND 24-186 (ALCOHOL PERMITTED ON PUBLIC PROPERTY; EXCEPTIONS FOR OUTDOOR DINING, SPECIAL EVENTS, ETC.), TO ALLOW ALCOHOL TO BE SERVED AND CONSUMED ON DESIGNATED AREAS OF PUBLIC PROPERTY UNDER LIMITED CIRCUMSTANCES AND WHEN ISSUED AN OUTDOOR DINING OR SPECIAL EVENT PERMIT BY THE TOWN

Kelly Burk, Vice Mayor
Town of Leesburg

ATTEST:

Clerk of Council