



Willie D. Freehling

MEMORANDUM

TO: Timothy J. Baroody, City Manager
FROM: Bill Freehling, Director of Economic Development and Tourism
Brian Layton, Chief of Police
Kathleen Dooley, City Attorney
DATE: April 22, 2021 (for the April 27 Council meeting)
SUBJECT: Changes to “Good Neighbor Ordinance”

ISSUE

Shall City Council amend the City’s Noise Ordinance – which henceforth can be referred to as the “Good Neighbor Ordinance” – to add a maximum limit for noise generated in the Downtown Business District during the daytime?

RECOMMENDATION

Yes. The absence of a maximum limit during daytime hours has created a situation where the noise generated from privately owned, commercial properties at times interferes with the reasonable use of nearby public sidewalks (including sidewalk cafes), and commercial and residential properties. This ordinance would give law-enforcement the ability to prevent these situations, with a goal toward making sure everyone can enjoy the wonderful environment that downtown Fredericksburg offers. The Police Department’s goal would be that it never has to enforce this ordinance, and that all businesses and residents take steps to be good neighbors of each other.

DISCUSSION

The City’s Noise Ordinance is found in City Code Chapter 38, Environment, Article II, Noise, §§38-31 and following. The ordinance defines the “Downtown Business District” as “the area bounded by the Rappahannock River, Amelia Street, Prince Edward Street, and Lafayette Boulevard.” Noise restrictions in the Downtown Business District are less restrictive than in other areas of the City, reflecting Council’s judgment that a higher level of noise downtown is generally acceptable.

The second important definition is “Plainly Audible,” which means “any sound that can be heard clearly by a person using his or her unaided hearing faculties, including understandable speech, comprehensive musical rhythms, melody, or instrumentation, and detectable rhythmic bass tones.” The City uses this standard because it is objective and verifiable – it replaced the

former “reasonableness” standard, which had been found to be unconstitutionally vague by the Virginia Supreme Court in *Tanner v. City of Virginia Beach*.¹

Changes to the ordinance were first contemplated after businesses in the Downtown Business District complained that loud neighboring noise was harming the outdoor dining experience of their customers. City staff began discussing possible changes with businesses, representatives from Fredericksburg VA Main Street, City Council members and more. That led to a proposal that came before Council in February. Staff was directed to continue meeting with businesses and Main Street representatives to work out a solution. That has occurred over the past couple of months.

The proposed amendment would add a maximum level of noise generated in the Downtown Business District by a person or group of people on property (not on City streets) or by a musical instrument/electronic audio device located on property (not on City streets). The new maximum daytime limit for this noise would be set using a standard of “plainly audible” at 200 feet from the boundary of the property on which the source of the sound is located. The current restrictions go into effect at either 11:00 p.m., midnight, or 1:00 a.m., depending on the day. The new restrictions are proposed to become effective at midnight each night (bumped back from the initial proposal of 11 p.m. to be responsive to the concerns of several downtown businesses). This should simplify the application of the ordinance. The ordinance retains the current nighttime maximum noise limit of “plainly audible” at 100 feet from the property boundary. Here is a summary of the changes:

Sound source	Current restrictions		Proposed
	Hours	Maximum	
Persons or groups of persons on property (not streets or sidewalks); musical instruments and electronic audio devices	Daytime	None	Plainly audible at 200’ 7 a.m. to midnight
	11 pm, midnight, or 1 a.m. to 7 a.m.	Plainly audible at 100’	Plainly audible at 100’ midnight to 7 a.m.

It’s important to note that the Police Department does not actively seek out violations of the ordinance, nor do officers plan to do so in the future. Rather, police respond to complaints and work with violators to correct the situation before issuing charges if possible. The Police Department would prefer to never have to use this ordinance to charge anyone, and it believes that downtown Fredericksburg can remain a vibrant place with this ordinance in place.

¹ 77 Va. 432 (2009).

Fredericksburg's Economic Development Authority has endorsed the proposed changes (see attached letter).

The Main Street board voted 7-5 on April 21 to support the proposed Good Neighbor Ordinance amendments coming to City Council. Some concern was raised about the timing of the ordinance coming out of a pandemic, and the potential impact on live outdoor music. The overall consensus, however, was that the proposed changes will be positive for downtown businesses, residents and visitors.

Businesses are simply asked to be respectful of their neighbors so that all can experience the delights of downtown Fredericksburg in harmony. Hence the name "Good Neighbor Ordinance." This ordinance would give the Police Department the ability to ensure that businesses, residents and visitors of downtown are truly being good neighbors as it pertains to noise.

Demonstrations that took place on public sidewalks downtown last summer typically ended before 11:00 p.m., and therefore did not generate a noise ordinance violation under current or proposed standards.

The noise ordinance provides certain exceptions that are important to mention in the context of demonstrations, protests, parades, and street festivals:

- The maximum standard for noise emanating from people "yelling, shouting, screaming or shrieking" on public streets and sidewalks (plainly audible at 100 feet) goes into effect at 11 p.m. under §38-36(B). The proposed amendment does not change this regulation.
- Sounds from activities duly authorized under a special event permit (e.g. parades and demonstrations) are exempt under §38-37;
- A person at a public demonstration held without a permit whose speech or communication would otherwise violate one of the noise prohibitions receives a warning and an opportunity to move, disperse, or otherwise remedy the violation prior to arrest or citation, under §38-33(B);
- Noise from specific events on private property with a permit from the City Manager, under §38-38.

Attachments: Ordinance
Letter from EDA Chair



April 27, 2021
Regular Meeting
Ordinance No. 21-__

MOTION:

SECOND:

RE: Amending the Noise Regulations in the Downtown Business District, Applying a “Plainly Audible” at 200 Feet Standard for Daytime Hours and at a 100 Foot Distance at Midnight Every Night

ACTION: APPROVED; Ayes: 0; Nays: 0

FIRST READ: _____

SECOND READ: _____

It is hereby ordained by the Fredericksburg City Council that Chapter 38, “Environment,” Article II, “Noise,” of the City Code is amended as follows:

Sec. I. Introduction.

The purpose of the noise ordinance is to prevent or abate the creation of a public nuisance, whereby the use of one property in a way that endangers life or health, obstructs or interferes with the reasonable or comfortable use of public or private property, tends to depreciate the value of the property of others, or in any way renders other persons insecure in the life or the use of property.

The present noise ordinance generally prohibits noise from musical instruments and electronic audio devices that is plainly audible 100 or more feet from the boundary of the property on which the sound source is located, throughout the City. However, this prohibition does not apply in the “Downtown Business District” – defined as the area bounded by the Rappahannock River, Amelia Street, Prince Edward Street, and Lafayette Boulevard -- except during specified late night hours, reflecting a legislative judgment that a higher level of noise downtown is generally acceptable during daytime hours. However, this absence of any limit on noise from these sources in the downtown business district during daytime hours has, on occasion, resulted in intolerable noise levels that interfere with the reasonable use of nearby private businesses and residences and public spaces.

The purpose of this amendment is to adopt reasonable regulations for noise in the downtown business district that will strike an appropriate balance between the higher levels of noise generated by downtown uses, and the reasonable enjoyment of private businesses and residences and public spaces in or near the downtown business district.

Sec. II. City Code Amendment.

1. Sec. 38-36. Specific acts prohibited.

The following are per se violations of this article:

A. Noise generated by a person or group of people that is plainly audible at 100 or more feet from the boundary of the property on which the source of the sound is located.

(1) In the downtown business district, this prohibition ~~only~~ applies *as follows*:

<i>7 a.m. through 12:00 midnight</i>	<i>200 feet from the boundary of the property on which the source of the sound is located.</i>
<i>12:00 midnight through 7 a.m.</i>	<i>100 feet from the boundary of the property on which the source of the sound is located.</i>

Sunday	1:00 a.m. to 7:00 a.m. and 11:00 p.m. to 12:00 midnight
Monday	12:00 midnight to 7:00 a.m. and 11:00 p.m. to 12:00 midnight
Tuesday	12:00 midnight to 7:00 a.m. and 11:00 p.m. to 12:00 midnight
Wednesday	12:00 midnight to 7:00 a.m. and 11:00 p.m. to 12:00 midnight
Thursday	12:00 midnight to 7:00 a.m. and 11:00 p.m. to 12:00 midnight
Friday	12:00 midnight to 7:00 a.m.
Saturday	1:00 a.m. to 7:00 a.m.

B. Yelling, shouting, screaming, or shrieking on the public streets or sidewalks that is plainly audible at 100 feet between 11:00 p.m. and 7:00 a.m.

- C. Musical instruments and electronic audio devices that are plainly audible:
- (1) One hundred or more feet from the boundary of the property on which the sound source is located.
- (a) In the downtown business district, this prohibition ~~only~~ applies *as follows*:

<i>7 a.m. through 12:00 midnight.</i>	<i>200 feet from the boundary of the property on which the source of the sound is located.</i>
<i>12:00 midnight through 7 a.m.</i>	<i>100 feet from the boundary of the property on which the source of the sound is located.</i>

- ~~(a) In the downtown business district, this prohibition only applies:~~
- | | |
|----------------------|---|
| Sunday | 1:00 a.m. to 7:00 a.m. and 11:00 p.m. to 12:00 midnight |
| Monday | 12:00 midnight to 7:00 a.m. and 11:00 p.m. to 12:00 midnight |
| Tuesday | 12:00 midnight to 7:00 a.m. and 11:00 p.m. to 12:00 midnight |
| Wednesday | 12:00 midnight to 7:00 a.m. and 11:00 p.m. to 12:00 midnight |
| Thursday | 12:00 midnight to 7:00 a.m. and 11:00 p.m. to 12:00 midnight |
| Friday | 12:00 midnight to 7:00 a.m. |
| Saturday | 1:00 a.m. to 7:00 a.m. |

- (2) One hundred or more feet from the source of the sound when the source is located on a public street or sidewalk in the downtown business district.

D. Motor vehicles.

- (1) Unnecessarily accelerating or decelerating quickly, revving the engine, or screeching tires.

- (2) Discharging exhaust except through an exhaust system in good working order and in constant operation to prevent excessive or unusual levels of noise. An exhaust system does not prevent excessive or unusual noise if it permits noise in excess of that permitted by the standard factory equipment exhaust system of private passenger motor vehicles of standard make.
- (3) Playing any audio device located within or on a motor vehicle, if the audio device is plainly audible at 100 or more feet from the vehicle. This prohibition does not apply to security alarms.
- (4) Sounding a motor vehicle horn or similar signaling device for more than 10 consecutive seconds, except as a safety measure.

E. Any amplified sound, intended primarily for a nonemergency purpose, from a bell, chime, whistle, siren, or similar device, for more than 10 consecutive seconds. This prohibition does not include reasonable sounding of those devices by houses of religious worship, ice cream trucks, or seasonal contribution solicitors.

F. Barking, howling, meowing, squawking, or other vocalizations of an animal that are plainly audible across a property boundary for 15 minutes between 7:00 a.m. and 11:00 p.m. or 10 minutes between 11:00 p.m. and 7:00 a.m.

G. Construction, demolition, alteration, or repair of any building, excavation of any street, or unloading of construction materials that is plainly audible across a property boundary, except this noise is permitted from 7:00 a.m. to 7:00 p.m. Monday through Friday and 9:00 a.m. to 9:00 p.m. on Saturdays, Sundays, and holidays.

H. Refuse and recycling collection activities between 10:00 p.m. and 6:00 a.m.

SEC. III. Effective Date.

This amendment is effective immediately.

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

Approved as to form:

Kathleen Dooley, City Attorney

Clerk's Certificate

I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Ordinance No. 21- duly adopted at a meeting of the City Council meeting held Date, 2021 at which a quorum was present and voted.

Tonya B. Lacey, MMC
Clerk of Council

FREDERICKSBURG
ECONOMIC
DEVELOPMENT
AUTHORITY

706 Caroline Street
Fredericksburg, VA 22401

(540) 372-1216
(540) 372-6587 Fax

April 19, 2021

The Economic Development Authority supports the Good Neighbor Ordinance. We believe Fredericksburg's lively and vibrant cultural scene is critical to the City's economic impact and growth, and the Good Neighbor Ordinance is a solid solution at protecting it while respecting the needs of all of the City's businesses and residents. We also applaud the loosening of some of the earlier proposed noise ordinance restrictions; it's clear that members of the City, its Council, Main Street and the business community listened to and worked together on this plan.

Sincerely,



Beth Black
Chair, Economic Development Authority