



**MEMORANDUM**

*Willie D. Freehling*

**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:** May 6, 2021 (for the May 11 Council meeting)  
**SUBJECT:** Changes to “Good Neighbor Ordinance”

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**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 – City Council should approve this on second reading (first-read approval occurred unanimously on April 27). 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.

With Council’s concurrence, **this change would take effect June 15**, which would give the Fredericksburg Police Department time to educate and work with downtown businesses on the changes.

**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*.<sup>1</sup>

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.

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<sup>1</sup> 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  
Chart of other localities



May 11, 2021  
Regular Meeting  
Ordinance No. 21-14  
*Amended*

**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: April 27, 2021**

**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	<del>1:00 a.m. to 7:00 a.m. and 11:00 p.m. to 12:00 midnight</del>
Monday	<del>12:00 midnight to 7:00 a.m. and 11:00 p.m. to 12:00 midnight</del>
Tuesday	<del>12:00 midnight to 7:00 a.m. and 11:00 p.m. to 12:00 midnight</del>
Wednesday	<del>12:00 midnight to 7:00 a.m. and 11:00 p.m. to 12:00 midnight</del>
Thursday	<del>12:00 midnight to 7:00 a.m. and 11:00 p.m. to 12:00 midnight</del>
Friday	<del>12:00 midnight to 7:00 a.m.</del>
Saturday	<del>1:00 a.m. to 7:00 a.m.</del>

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:~~

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

- (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~~ *on June 15, 2021.*

**Votes:**

**Ayes:**

**Nays:**

**Absent from Vote:**

**Absent from Meeting:**

Approved as to form:

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Kathleen Dooley, City Attorney

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***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. 21-14 duly adopted at a meeting of the City Council meeting held May 11, 2021 at which a quorum was present and voted.*

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***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

## Various Communities Noise Ordinances 4/21

Town	Population	Ordinance	Time	Link
Alexandria, VA	160,140	<p>Recently Updated:                      Civil Penalty: \$100, \$250*, \$500**                      *Within 7 days of first violation                      **Within in 14 days of first violation. Becomes criminal if more than 3 in 12 months period.                      No sound may exceed 65 dB. May not be heard beyond 50'.                      No sound may exceed 75 dB. May not be heard beyond 50'.</p>	<p>11pm to 7am                       7am to 11pm</p>	<p><a href="#">Noise Control   City of Alexandria, VA</a></p>
Bristol, VA		<p><i>Radios, phonographs, etc.</i> The using, operating or permitting to be played, used or operated any radio or television receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person who is in the room, vehicle or chamber in which such machine or device is operated and who is a voluntary listener thereto. The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.</p>	<p>11pm curfew no dB in place.                       11pm to 7am, 50 feet, plainly audible</p>	<p><a href="#">Bristol residents sound off on noise issue   Latest Headlines   heraldcourier.com</a></p> <p><a href="#">Chapter 38 - ENVIRONMENT   Code of Ordinances   Bristol, VA   Municode Library</a></p>
Charlottesville, VA	46,780	<p>Class 4 misdemeanor                      Noise: Business District: 75 dB or more at a distance of 10' or more from the sound of the sound generation.                      Sound levels in restaurants and music halls: not in excess of 55 dB in neighbor commercial corridor</p>	<p>11pm to 6am</p>	<p><a href="#">Noise-Ordinance-PDF (charlottesville.org)</a></p>

## Various Communities Noise Ordinances 4/21

Farmville, VA	7,872	<p>New Changes: Dec 2019            Class 4 Misdemeanor:            The playing of music or other noise, electronically or otherwise, in such a manner or with such volume or duration as to be plainly audible through the wall of an enclosed dwelling, business or other structure</p> <p><i>Unreasonably loud.</i> Noise which is substantially incompatible with the time and location where created to the extent that it creates an actual or imminent interference with peace or good order. The following factors incident to such noise are to be considered: time of day; proximity to residential structures; whether the noise is recurrent, intermittent, or constant; the volume and intensity; whether the noise is related to the normal operation of a business or other labor activity and whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof</p>	<p>11pm to 7am Sunday to Wednesday            Midnight to 7am Thursday to Saturday.</p> <p>Note: no defined feet in definition of plainly audible</p>	<p><a href="#">Chapter 16 - NOISE CONTROL   Code of Ordinances   Farmville, VA   Municode Library</a></p>
Greenville, SC	68,563	<p>Penalty: All law enforcement officers in the ordinary course of their duties shall have the authority to request compliance without having received a complaint from a member of the public. However, no charge shall be made against any person, unless a complaint is made to an officer and the person has first been provided an opportunity to abate the offending noise immediately without penalty. However, if the violation continues or reoccurs within a 24-hour period, or if the same person has been provided an opportunity two or more times within the preceding 30 days to abate a noise at the same location and the person continues to make the noise or continues to allow it to be made, then such person shall be guilty of a violation of this division and shall be subject to a fine of not less than \$50.00 and not more than the maximum fine allowed by state law for violations of municipal ordinances, or imprisonment for not more than 30 days. The city attorney may also seek injunctive relief, or any other appropriate remedy available at</p>		<p><a href="#">DIVISION 3. - NOISE   Code of Ordinances   Greenville, SC   Municode Library</a></p>

## Various Communities Noise Ordinances 4/21

		<p>law or in equity, in a court of competent jurisdiction, to ensure compliance.          Daytime Decibels are 80, Nighttime 75.          dBA readings will be made at least 25' away from the privately owned premises from which the noise is generated or 25' from the source if on public property.</p>	<p>Central Business District:          Daytime: 7am to 10pm</p>	
Harrisonburg, VA	54,033	<p>Class 4 misdemeanor if first time in 3 years. If convicted twice within 3 years, Class 3 misdemeanor. If convicted 3 or more, Class 2 misdemeanor.          Mass Outdoor gatherings: Must show evidence of plans to mitigate and limit sound from the mass outdoor gathering so the effects of excessive noise are minimized or eliminated. And evidence that the site and the contact organizer has not had a noise violation of two or more in 12 preceding months.          Large party nuisance: gathering of 10 people or more whether contained within a structure or spills outdoor, and is plainly audible across a property line, through partitions common to 2 dwellings within a building or at a distance of 100' or more from its source and on property other than that where it originated.          Sound level - Restaurants: no sound is allowed during operating hours in excess of 65dBA when measured at or outside the property line.</p>	<p>Mass Outdoor Gathering: 10am to 10:30pm. 100 people or more. Public or private land.          This appears to be 24 hours.</p> <p>Recently removed times of 7am to 2am.</p>	<p><a href="https://www.harrisonburgva.gov/sites/default/files/CMO/Noise%20Ordinance%2015-3-2%20and%2015-3-3%20%282017%29%20revised.pdf">https://www.harrisonburgva.gov/sites/default/files/CMO/Noise%20Ordinance%2015-3-2%20and%2015-3-3%20%282017%29%20revised.pdf</a></p>
Lexington, VA	7,136	<p>Civil Penalty: \$250 for 1<sup>st</sup> offense, \$.500 for 2<sup>nd</sup> and all others.          Radios, phonographs, etc. The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time or any place, including</p>	<p>All day – 50 “</p>	<p><a href="http://www.cityoflexingtonva.com/Noise">City of Lexington, VA Noise (ecode360.com)</a></p>

## Various Communities Noise Ordinances 4/21

		<p>streets, sidewalks, parking lots and other places open to the public, with louder volume than is necessary for convenient hearing for the persons who are in the room, vehicle, chamber or other place in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device in an unenclosed place at any time during the day or night or in an enclosed place between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from the building, structure or vehicle in which it is located or from the device itself, if in the open, shall be prima facie evidence of a violation of this section</p> <p>Except in public emergency, it shall be unlawful for any person to make use of sound-amplifying equipment or loudspeakers, in such a manner that the sound or noise thereof is audible to the public, without a written permit from the City Manager. This section shall not be construed to prohibit the operation of any motor vehicle or trailer pursuant to a permit obtained under § <u>275-4</u>.</p>		
Lynchburg, VA	82,126	<p>Class 3 misdemeanor, second time in 12 months, Class 2.            Business 7am to 10pm 67dB, 62dB from 10pm to 7am            10minute reading during noise and once removed for background noise.</p>	<p>See notes in column to the left.            If wind blowing over 10mph or precipitation, a sound level meter cannot be used. If can't be used, officer will resort to other available means as section III, G. any noise from an adjacent property or street which</p>	<p><a href="#">FO-0713-Noise Ordinance Enforcement-15.pdf (lynchburgva.gov)</a>   <a href="#">Lynchburg, Virginia.pdf (nonoise.org)</a></p>

## Various Communities Noise Ordinances 4/21

			unreasonable disturbs certain persons within a noise sensitive zone, certain enumerated acts declared to create excessive, unnecessary or unreasonable noise, or unnecessary noise in the operation of motor vehicles.	
Manassas, VA	41,641	<p>Class 2 misdemeanor. Commercial District: 65 dB 7am to 7pm weekdays, 9am to 6pm on weekends and legal holidays observed by the city government. 60 dB times outside the ones listed above.</p> <p>Noise level at any public gathering shall not exceed 100 dB.</p> <p>Other violations: The playing of radio, phonographs, television, tape or disc players, musical instruments or drums, sound amplifiers or similar devices which produce, reproduce or amplify sound in such a manner as to emit sound audible at a distance of 50 feet outside of a building or audible through partitions common to two or more dwelling units within a building.</p> <p>Vehicle Class: Speed limit 35mph or less – 6,000 lbs or more – 86dB, motorcycles 82dB, towed vehicle 76dB.</p>	Measured at the lot line of the sound source or at any point within any other property affected by the noise. Minimum of 3 readings taken.	<a href="#">Chapter 58 - ENVIRONMENT   Code of Ordinances   Manassas, VA   Municode Library</a>
Roanoke, VA	99,411	<p>Class 2 Misdemeanor and public nuisance Noise from musical instruments:</p>	10pm and 8am sound heard across a residential real property boundary.	<a href="#">ARTICLE VII. - NOISE CONTROL   Code of Ordinances  </a>

## Various Communities Noise Ordinances 4/21

			8am to 10pm, sound heard on residential property more than 50' from boundary of the source.	<a href="#">Roanoke, VA   Municode Library</a>
Staunton, VA	24,922	Class 4 Misdemeanor 80 dBA as measured at any point 50' perpendicular to the apparent property boundary where the noise emanates	11:30pm to 9am	<a href="#">Chapter 8.25 NOISE* (codepublishing.com)</a>
Winchester, VA	28,108	Class 3 Misdemeanor In excess of 65 dB when measured inside the receiving structure at least 4' from the wall of the nearest source with doors and windows to the receiving area closed. Motor Vehicle Noise 35mph or less: All at a distance of 50'. Motor vehicle > 6,000 and: 86 Motorcycles: 82dB Any other motor vehicles or any combination being towed: 76dB.	6pm to 11:59pm Monday to Thursday 6pm to 1:30am Friday through Saturday/Sunday morning	<a href="#">CHAPTER 17 - NOISE CONTROL   Code of Ordinances   Winchester, VA   Municode Library</a>

Notes: Findings mainly concentrated on noise in commercial business or downtown districts.

Daytime noise ordinance is becoming a topic for discussion for a few of the Downtowns.

Type of punishment varies for a civil offense to misdemeanors 2 to 4.

Amplified music versus acoustic music.

Times of day and weekdays may vary in limitations.

dBA: Only one that I found required more than one reading and had a time limit required for violations – 10 minutes and 3 readings.

Topography affects how sound travels.

From Greenville, SC: When determining violations, enforcement officers consider factors such as volume and intensity; the source and nature of the noise; and the area where it occurs, according to the City of Greenville. Officers do not need a complaint from the public to request compliance but do not charge anyone unless a complaint is made. Continued or repeated violations are cause for a fine.