



CITY OF FREDERICKSBURG, VIRGINIA

CITY COUNCIL

MINUTES

Council Chambers, 715 Princess Anne Street
Fredericksburg, Virginia 22401

ITEM #9B

HON. MARY KATHERINE GREENLAW, MAYOR
HON. CHARLIE L. FRYE, JR., VICE -MAYOR, WARD FOUR
HON. KERRY P. DEVINE, AT-LARGE
HON. MATTHEW J. KELLY, AT-LARGE
HON. JASON N. GRAHAM, WARD ONE
HON. WILLIAM C. WITHERS, JR., WARD TWO
HON. DR. TIMOTHY P. DUFFY, WARD THREE

Council Work Session

January 26, 2021

Board of Building Codes Appeals Interview

Draft Noise Ordinance

Amending City Code to Remove the Crime of Profane Swearing in Public Acceptance of Gordon Shelton Boulevard

The Council of the City of Fredericksburg, Virginia held a work session on Tuesday, January 26, 2021, beginning at 5:30 p.m. using electronic communication through GoToMeeting pursuant to and in compliance with the City Council Ordinance 20-05, an ordinance to address Continuity of City Government during the pendency of a pandemic disaster.

Council Present. Mayor Mary Katherine Greenlaw, Presiding. Vice-Mayor Charlie L. Frye, Jr. Councilors Kerry P. Devine, Timothy P. Duffy, Jason N. Graham, Matthew J. Kelly and William C. Withers, Jr.

Also Present. City Manager Timothy J. Baroody, Assistant City Manager Mark Whitley, Assistant City Manager Doug Fawcett, City Attorney Kathleen Dooley, Assistant City Attorney Dori Martin, Police Chief Brian Layton and Clerk of Council Tonya B. Lacey.

Board of Building Codes Appeals Interview. Ms. Columbo gave her background stating that she was a graduate of Virginia Tech, she had a Bachelor of Architecture five-year Professional Degree, she was a licensed Architect in Virginia and the District of Columbia. Ms. Columbo has been practicing for 22 years and she has lived and practiced in the City since 2002. She had lots of experience working with the building department, zoning department and the Architectural Review Board because a lot of her work had been in the downtown.

Ms. Columbo stated that as she walks through an appeal she would look to see why there was a denial and whether there was a financial hardship and take a step back and look at all the information to include what the state code required and she would try to meet in the

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middle. She said the health, safety and welfare was most important. She said she would do her best to be impartial and make the best decision. Ms. Columbo said she loves her community and being able to use her skills to help her community was the right thing to do.

Draft Noise Ordinance. Police Chief Layton presented a PowerPoint presentation and he discussed the Current Ordinance – Positives, Current Ordinance – Concerns, Recommendation, Noise Ordinance – Map of Downtown Business District, and Issuance of Permits. See Attachments II and III for more information.

Councilor Devine said she was struggling with plainly audible sounds because some businesses were not adhering to a reasonable amount of sound and it was really loud. Chief Layton said right now there was nothing they could do about it because of the way the ordinance was written but the proposal states that at 200 feet and if the sound could be detected by an officer they would be in violation of the noise ordinance. She was not sure the 200-foot boundary would be workable.

Councilor Kelly asked several questions and Chief Layton stated that he would pull together statistics to answer his questions. He did however explain that if a person was first warned and continues to violate the ordinance then a summons would be issued and they would have to go before the judge. He noted that this was a good tool because the judge had been holding them up and not throwing them out.

Mayor Greenlaw said she was happy to see a mechanism to tone the noise down. Councilor Kelly asked that staff sit down with businesses that would be affected and let them know of the proposed changes.

City Attorney Dooley explained that in 2015 many of the Cities rewrote their ordinances because they all used unreasonable loud standard, thinking it was acceptable but Supreme Court thought otherwise. She said the plainly audible standard was one of the methods that had been adopted. It was an objective standard that could be verified and shown to the violator and she was confident in the legality approach. She said the ordinance makes a distinction between downtown and residential. The changes in the ordinance would still allow music but at a reasonable level.

Councilor Withers noted that there was a need for something and he was ready to push this forward.

Councilor Duffy said he appreciated the clarification and he thought maybe 200 feet was too short a distance but he said something needed to be done quickly.

Amending City Code to Remove the Crime of Profane Swearing in Public.

Chief Layton noted that in 2020 Virginia legislation removed profane swearing as a criminal offense in the Virginia Code. He said this law had remained on the books in Virginia despite the 1971 ruling by the United States Supreme Court, which said it was contrary to the first amendment. He said in order to align with the State Code it was time to update the City Code to match the State Code and remove the language of profane swearing.

Councilor Devine asked what places were defined as public and Chief Layton said places where people congregate, streets, sidewalks and parks.

Mayor Greenlaw asked if someone was speaking before the Council and used profanity could she call them on it and City Attorney Dooley explained that she could because it would be during public hearing or comment portion of a public forum which is time created for comment within a public body and the commenter must respect and adhere to the decorum of that public body.

Acceptance of Gordon Shelton Boulevard. Assistant City Manager Fawcett reviewed the resolution adding City streets to the VDOT system to qualify them for VDOT annual maintenance payment starting July 1, 2021. Staff recommended acceptance of the streets to include Gordon Shelton Boulevard, Adair Street, Hospitality Lane so they could begin accumulating funds attributing to these streets before the streets have to be improved upon. He anticipated that with the addition of these streets it would add approximately \$78,000 to the annual maintenance payment.

He said the streets were old and would need to be upgraded at some point. He said there was always a debate of when we should add a street to the street system. Mr. Fawcett was asked about the downside of delaying and he explained that the City was already responsible for the roadway and if it was not added to the street system the City would lose the funding for repair of the road.

Adjournment. There being no further business to come before the Council at this time. Mayor Greenlaw declared the session officially adjourned at 6:31 p.m.

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**Tonya B. Lacey
Clerk of Council
City of Fredericksburg**

Print

Boards & Commissions Appointment Application - Submission #30408

Date Submitted: 1/1/2021

First Name*

Melissa

Last Name*

Colombo

Address1*

418 Bunker Hill St

Address2

City*

Fredericksburg

State*

VA

Zip*

22401

Phone Number*

5402873489

Work Number

Email*

mtcolombo@gmail.com

Occupation

Architect

Employer

Are you a City of Fredericksburg Resident?*

Yes

No

Employer Address



NOISE ORDINANCE REVISION

*Fredericksburg Police Department
Brian Layton, Chief of Police*



Current Ordinance - concerns





- Two primary concerns:
 - There is currently no restriction on noise within the defined Downtown Business District between the hours of 7 AM and either 11 PM or 1 AM (depending on day of week). After those times the restriction is 100' from the property line.
 - The time parameters for the Downtown Business District can be difficult to navigate:

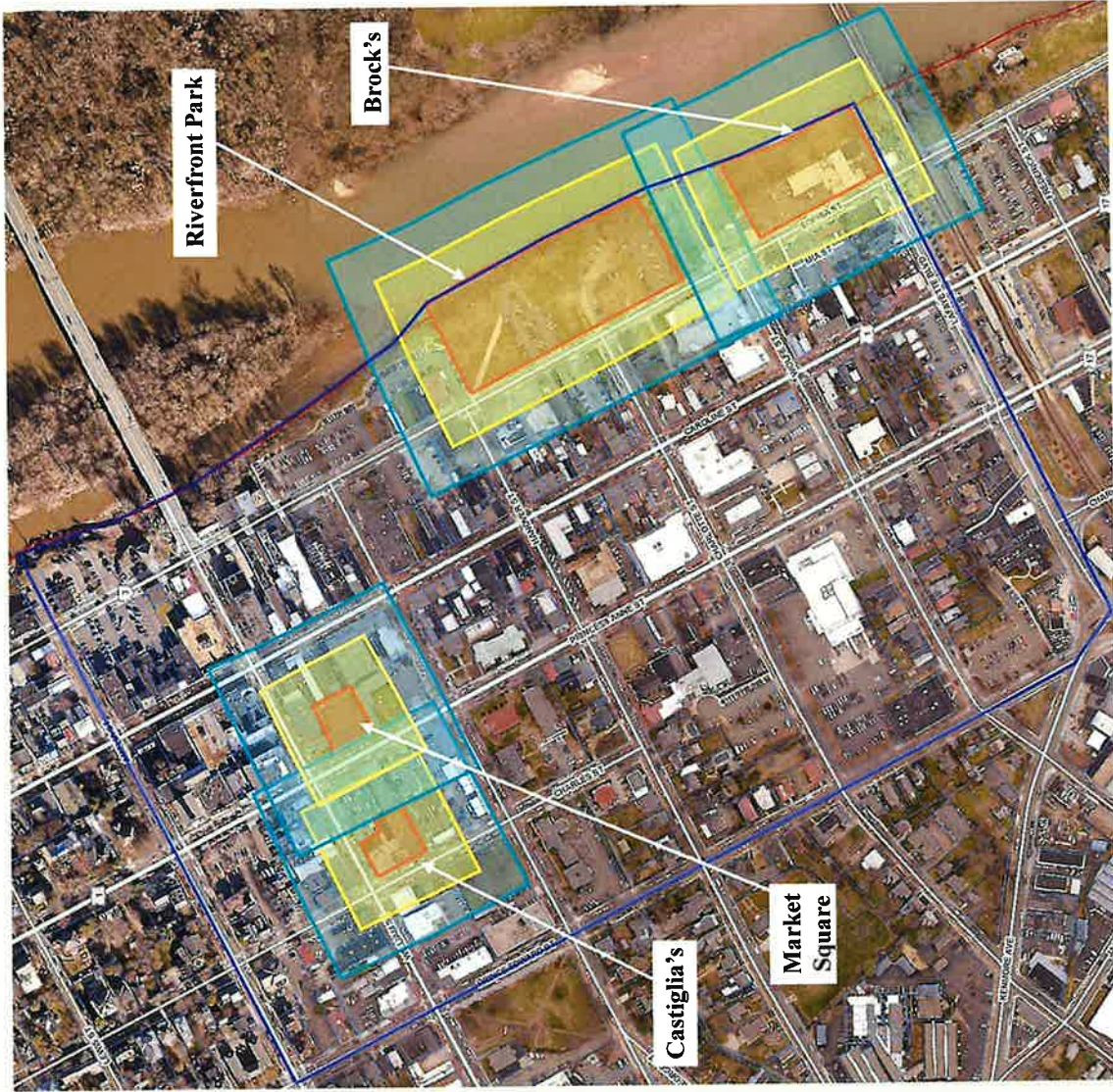
Sunday	1 a.m. to 7 a.m. and 11 p.m. to midnight
Monday	Midnight to 7 a.m. and 11 p.m. to midnight
Tuesday	Midnight to 7 a.m. and 11 p.m. to midnight
Wednesday	Midnight to 7 a.m. and 11 p.m. to midnight
Thursday	Midnight to 7 a.m. and 11 p.m. to midnight
Friday	Midnight to 7 a.m.
Saturday	1 a.m. to 7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



Noise Ordinance – Map of Downtown Business Dist.

Map 1

-  Downtown Footprint
-  Property Line
-  100' from property line
-  200' from property line



Questions?





MOTION: KELLY

SECOND: FRYE

September 22, 2015
Regular Meeting
Ordinance No. 15-20
Amended

RE: NOISE ORDINANCE:

1. REMOVING THE GENERAL PROHIBITION ON UNREASONABLE NOISE;
2. ADDING A SPECIFIC PROHIBITION ON SHOUTING IN THE STREETS AND SIDEWALKS AT NIGHT;
3. ADDING A SPECIFIC PROHIBITION ON NOISE GENERATED BY A PERSON OR GROUP THAT IS PLAINLY AUDIBLE AT 100 FEET; AND
4. REMOVING HOUR-OF-DAY LIMITATIONS ON THE SPECIFIC PROHIBITION OF AUDIO DEVICES (EXCEPT FOR THE DOWNTOWN BUSINESS DISTRICT) AND INCREASING THE PLAINLY AUDIBLE STANDARD ON THAT PROHIBITION FROM 50 FEET TO 100 FEET.

ACTION: APPROVED: Ayes: 5; Nays: 1

IT IS HEREBY ORDAINED by the Fredericksburg City Council that Chapter 38 of the City Code is amended as follows:

SEC. I. City Code Amendment.

1. Chapter 38. Environment, Article II. Noise, consisting of Sections
 - 38-31. Short title and application of article generally.
 - 38-32. Definitions.
 - 38-33. Administration and enforcement of article.
 - 38-34. Violations of article.
 - 38-35. General prohibition.
 - 38-36. Specific acts prohibited.
 - 38-37. Exemptions from article.
 - 38-38. Issuance of permits.
 - 38-39 through 38-70. (Reserved)

is hereby repealed and replaced with the following:

§ 38-31. Short title and application of article generally.

This article is the "Noise Control Ordinance of the City of Fredericksburg." It is applicable to noise originating within the City and from City-owned lands located outside the City limits.

§ 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.

a. In the downtown business district, this prohibition only applies:

Sunday	1 a.m. to 7 a.m. and 11 p.m. to midnight
Monday	Midnight to 7 a.m. and 11 p.m. to midnight
Tuesday	Midnight to 7 a.m. and 11 p.m. to midnight
Wednesday	Midnight to 7 a.m. and 11 p.m. to midnight
Thursday	Midnight to 7 a.m. and 11 p.m. to midnight
Friday	Midnight to 7 a.m.
Saturday	1 a.m. to 7 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. 100 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:

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

2. 100 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

§ 38-38. Issuance of permits.

The City Manager may issue permits to persons allowing the production of noise that might otherwise be prohibited under this article. Those permits shall be limited to a specific event, time period, or activity. The permits shall be issued in accordance with regulations promulgated by the City Manager and published in the City administrative manual.

§ 38-39. through § 38-70. (Reserved).

SEC. II. Effective Date.

This ordinance is effective *October 15*.

Votes:

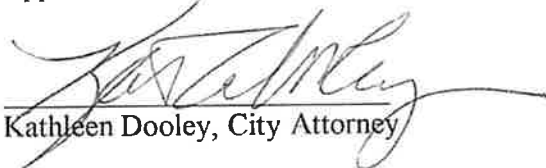
Ayes: Withers, Devine, Duffy, Ellis, Frye, Kelly

Nays: None

Absent from Vote: Greenlaw

Absent from Meeting: Greenlaw

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. 15-20 duly adopted at a meeting of the City Council meeting held September 22, 2015 at which a quorum was present and voted.


Tonya B. Lacey, CMC
Clerk of Council



MEMORANDUM

TO: Timothy J. Baroody, City Manager
FROM: Brian Layton, Chief of Police
DATE: January 26, 2021
SUBJECT: Profane Swearing in Public City Code Revision (54-17)

ISSUE

Should the City Council make an amendment to 54-17 of the City Code to remove the profane swearing in public section from the code?

RECOMMENDATION

Council should amend the City Code to remove this specific section of the text.

DISCUSSION

The 2020 Virginia General Assembly adopted legislation to remove profane swearing as a criminal offense from Code of Virginia Section 18.2-388, otherwise known as the public intoxication statute. This law has remained on the books in Virginia over the years despite a 1971 ruling by the United States Supreme Court, which held that banning offensive language was contrary to the First Amendment. The law was changed this year as part of a broader effort to modernize the Virginia Code.

Virginia Code Section 18.2-388 has been incorporated into the Fredericksburg City Code at Section 54-17. Therefore, an update to the City Code is needed to conform to the newly-revised analogous state code provision.

FISCAL IMPACT

None.

Attachments:

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***