



TOWN OF FAIRFAX

STAFF REPORT

October 11, 2022

TO: Mayor and Town Council

FROM: Heather Abrams, Town Manager and David Woltering, Interim Planning and Building Services Director

SUBJECT: Discuss Allowing Amplified Music in Parklets and Provide Direction to Staff

This item (formerly Item #17) was continued from the October 6, 2022 meeting.

RECOMMENDATION

Staff recommends the Council discuss options and provide direction for possible consideration of amplified music in parklets.

BACKGROUND

In June 2020, Fairfax began allowing outdoor dining in response to COVID-19 restrictions via temporary encroachment permits (TEPs) to use the public right-of-way, and temporary use permits (TUPs) for private outdoor spaces. On May 5, 2021, Council extended the term for TEPs and TUPs to May 8, 2022. On April 6, 2022 Council provided direction on new requirements for outdoor dining structures, and the Council extended the current TEPs and TUPs. Next, the Planning Commission reviewed the proposed zoning changes for outdoor dining, and then staff brought an outdoor dining ordinance to the Town Council for first reading on June 15, 2022. At that meeting, the Council directed staff to make several changes to the ordinances and parklet standards guide, and to extend the TEPs and TUPs to December 15, 2022 to allow time for the businesses to be in full compliance with the anticipated ordinances. Critical flaws in any existing parklets were to be fixed by the end of September. The first reading of the ordinances was conducted on August 3, 2022 and the second reading and adoption was completed on September 7, 2022, with the effective date of October 7, 2022. On or after October 7, existing parklet businesses may apply for a replacement parklet permit. Also on this October 6th, 2022 Council Meeting Agenda is the Public Hearing for permit fees and public space rental fees for parklets.

The Council's direction regarding the requirements of outdoor dining structures going forward has been communicated with the public and the businesses via Town Council Meetings, newspaper articles, the Town Newsletter, and letters directed to the nine businesses that currently have parklets.

DISCUSSION

The ordinances approved at the September 7, 2022 Council Meeting allow for acoustic-music-only to be performed in parklets, and at that meeting, Council directed staff to return with consideration of allowing amplified music to be performed in parklets.

In accordance with that direction staff is seeking direction from the Council on possibly amending the Parklet ordinance(s) to allow amplified music. If the Council would desire to allow amplified music in parklets, staff would need to bring back appropriate amendments to the Parklet ordinance(s) and possibly to the Fairfax Noise Control Code. Staff would attempt to bring back a draft ordinance amendment(s) for introduction and first reading at the Town Council's November 2, 2022 meeting.

Staff has attached a copy of the Town of Fairfax Noise Control Code, Chapter 8.20 from the Town of Fairfax Municipal Code. Generally, the Town regulates noise levels, as appropriate, to address public health, welfare, and safety concerns. Currently, under Section 8.20.070 (C) Exemptions of Chapter 8.20, amplified music would be allowed for occasional outdoor gatherings, public dance, shows, and sporting and entertainment events, provided the events are conducted pursuant to a permit or license issued by the town relative to the staging of the events. Chapter 8.20 includes Noise Limits for various Noise Zones in the town. Parklets are allowed in the Central Commercial Zone (CC) and the Highway Commercial Zone (CH), both are commercial zones. The Noise Limits for Commercial Zones are 55 dBA at Night, 10:00 p.m. – 7:00 a.m., and 60 dBA during the Day, 7:00 a.m. – 10:00 p.m. It is expected that amplified music conducted outdoors would typically exceed those limits.

In the circumstance that the Town Council would want to allow amplified music in parklets, staff is seeking guidance on what parameters should be used in a permit that would be issued for the use, either under Section 8.20.070 (C) of the Town's current code or as may be amended. Parameters/conditions for allowing amplified music in parklets could be developed.

Considerations could involve, but not be limited to, the following:

- a. During what hours?
- b. How often, i.e., days of the week?
- c. Minimum distance from sensitive land uses, i.e., primarily residential neighborhoods?
- d. Placement of equipment to assure needed path-of-travel, etc.?
- e. Other considerations?

Next Steps for Implementing the adopted Parklet Program

Guidelines for construction of parklets have been provided in the September 7, 2022 Council Packet. Several of the existing structures will need to be removed and/or significantly remodeled to meet the new requirements. Staff has drafted a parklet compliance check list and will be completing a more detailed inspection of each existing parklet. Next, staff will schedule a meeting with each parklet business to discuss each repair or remodel item that needs to be done to their individual parklet and reminding them that this work needs to be completed by December 15, 2022. Information on amplified music in parklets can be delivered to parklet businesses at that time.

FISCAL IMPACT

None at this time.

ATTACHMENT

Town of Fairfax Noise Control Code

CHAPTER 8.20: NOISE CONTROL

Section

- 8.20.010 Policy declaration; nuisance declared
- 8.20.020 Definitions
- 8.20.030 Compliance by town departments
- 8.20.040 Complaint investigation; noise measurement procedure
- 8.20.050 Exterior noise limits
- 8.20.060 Prohibited acts
- 8.20.070 Exemptions
- 8.20.080 Prima facie violation
- 8.20.090 Notice of violation
- 8.20.100 Violation; penalty
- 8.20.110 Additional remedies
- 8.20.120 Exception procedure
- 8.20.130 Declared emergency

§ 8.20.010 POLICY DECLARATION; NUISANCE DECLARED.

(A) In order to control unnecessary, excessive and annoying noise in the town, it is declared to be the policy of the town to prohibit the noise generated from or by all sources as specified in this chapter. It is the policy of the town to maintain quiet in those areas which exhibit low noise levels and to implement programs aimed at reducing noise in those areas within the town where noise levels are above acceptable values.

(B) It is determined that certain noise levels are detrimental to the public health, welfare and safety, and are contrary to public interest. Therefore, the town does ordain and declare that creating, maintaining, causing or allowing to be created, caused or maintained, any noise in a manner prohibited by or not in conformity with the provisions of this chapter, is a public nuisance.

(Prior Code, § 8.16.010) (Ord. 481, passed - -1981)

§ 8.20.020 DEFINITIONS.

All terminology used in this chapter, not defined in this section, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

A WEIGHTED SOUND LEVEL. The sound level in decibels as measured on a sound level meter using the A weighted network. The level so read is designated **dB(A)** or **dBA**.

AMBIENT NOISE LEVEL. The composite of noise from all sources near and far. In this context, the ambient noise level constitutes the normal or existing level of environmental noise at a given location.

COMMERCIAL AREA. Any part of the areas designated as commercial zones by the zoning ordinance of the town.

CONSTRUCTION. Any site preparation, assembly, erection, substantial repair, alteration or similar action, for or of public or private rights-of-way, structures, utilities or similar property.

DECIBEL. A unit for measuring the amplitude of a sound, equal to 20 times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals.

DEMOLITION. Any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces or similar property.

EMERGENCY WORK. Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

FIXED NOISE SOURCE. A stationary device which creates sounds while fixed or motionless, including, but not limited to residential, agricultural, industrial and commercial machinery and equipment, pumps, fans, compressors, air conditioners and refrigeration equipment.

IMPULSIVE SOUND. Sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts and the discharge of firearms.

NOISE DISTURBANCE. Any sound which, as judged by the Chief of Police or his or her designated representative, violates the limits set forth in the table of § 8.20.050 of this chapter. Compliance with this chapter shall constitute elimination of a noise disturbance.

NOISE ZONE. Any defined areas or regions of a generally consistent land use as shown on Exhibit A, Noise Zones of the Town of Fairfax, attached to the ordinance codified in this chapter and available for inspection in the office of the Town Clerk.

PERSON. Any individual, association, partnership or corporation, and includes, any officer, employee, department, agency or instrumentality of a state or any political subdivision of a state.

PUBLIC RIGHT-OF-WAY. Any real property or structures thereon which are owned or controlled by a governmental entity.

PUBLIC SPACE. Any real property or structures thereon which are owned or controlled by a governmental entity.

PURE TONE. Any sound which can be judged as audible as a single pitch or a set of single pitches by the Chief of Police or his or her designated representative. In case of dispute, a **PURE TONE** shall exist if the one-third-octave band sound pressure level in the band with the tone exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third-octave bands by five decibels for center frequencies of 500 Hertz and above and by eight decibels for center frequencies between 160 and 40 Hertz and by 15 decibels for center frequencies less than or equal to 125 Hertz.

REAL PROPERTY BOUNDARY. An imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.

RESIDENTIAL AREA. Any part of the areas designated as residential zones by the zoning ordinance of the town.

SOUND-AMPLIFYING EQUIPMENT. Any device for the amplification of the human voice, music or any other sound, excluding standard automobile radios when used and heard only by the occupants of the vehicle in which the radio is installed, and, as used in this chapter, warning devices on

authorized emergency vehicles or horns or other warning devices on any vehicle used only for traffic safety purposes.

SOUND LEVEL METER. An instrument, including a microphone, an amplifier, an output meter and frequency weighting networks for the measurement of sound levels, which meets or exceeds the requirements pertinent for type S2A meters in American National Standards Institute (ANSI) specifications for sound level meters, S1.4-1971, or the most recent revision thereof.

SOUND TRUCK. Any motor vehicle, or any other vehicle, regardless of motive power, whether in motion or stationary, having mounted thereon or attached thereto, any sound-amplifying equipment.

WEEKDAY. Any day, Monday through Friday, which is not a legal holiday.

(Prior Code, § 8.16.020) (Ord. 481, passed - -1981)

§ 8.20.030 COMPLIANCE BY TOWN DEPARTMENTS.

(A) All departments of the town shall carry out their activities in accordance with the provisions of this chapter.

(B) Each department whose duty it is to review and approve new projects, or changes to existing projects, which result or may result in the emission of noise shall make the finding that the project complies with the provisions of this chapter prior to project approval.

(Prior Code, § 8.16.030) (Ord. 481, passed - -1981)

§ 8.20.040 COMPLAINT INVESTIGATION; NOISE MEASUREMENT PROCEDURE.

Upon receipt of a complaint from a citizen, the Chief of Police or his or her designated representative, equipped with a sound level meter, shall investigate the complaint. The investigation shall consist of a measurement and the gathering of data to define adequately the noise problem and shall include the following.

(A) *Non-acoustic data.*

- (1) Type of noise source;
- (2) Location of noise source relative to complainant's property;
- (3) Time period during which noise source is considered by complainant to be intrusive;
- (4) Total duration of noise produced by noise source; and
- (5) Date and time of noise measurement survey.

(B) *Noise measurement procedure:*

(1) Utilizing the A weighting scale of the sound level meter and the "slow" meter response (use "fast" response for impulsive type sounds), the noise level shall be measured at a position or positions at any point on the complainant's property line.

(2) In general, the microphone shall be located four to five feet above the ground, ten feet or more from the nearest reflective surface, where possible; however, in those cases where another elevation is deemed appropriate, the latter shall be utilized. Calibration of the measurement equipment, utilizing an acoustic calibrator, shall be performed immediately prior to recording any noise data.

(Prior Code, § 8.16.040) (Ord. 481, passed - -1981; Am. Ord. 529, passed - -1984)

§ 8.20.050 EXTERIOR NOISE LIMITS.

(A) Maximum permissible sound levels by receiving land use.

(1) The noise standards for the various noise zones as presented in the following table shall, unless otherwise specifically indicated, apply to all such property within a designated zone.

(2) No person shall operate or cause to be operated any source of sound at any location within the incorporated town, or allow the creation of any noise on property owned, leased, occupied or otherwise controlled by the person, which causes the noise level when measured at the complainant's property line to exceed the limits in the table below for more than seven and one-half minutes in a 15-minute period. Those seven and one-half minutes need not be continuous.

(3) If the measured ambient level differs from that permissible, the allowable noise exposure standard shall be adjusted in five-decibel increments in each category as appropriate to encompass or reflect the ambient noise level.

(4) If the measurement location is on a boundary between two different zones, the noise level limit applicable to the lower noise zone shall apply.

(B) Correction for character of sound.

(1) In the event the alleged offensive noise, as judged by the Chief of Police or his or her designated representative, contains a steady, audible tone such as a whine, screech or hum, or is a repetitive noise such as hammering or riveting, or contains music or speech, the standard limits set forth in the table below shall be reduced by five decibels.

Exterior Noise Limits			
(Levels not be exceeded more than 7.5 minutes in any 15-minute period)			
Noise Zone	Time Period		Noise Level (dBA)
A (Residential)	Night	10:00 p.m. - 7:00 a.m.	40
	Day	7:00 a.m. - 10:00 p.m.	50
B (Multiple Dwelling, Residential)	Night	10:00 p.m. - 7:00 a.m.	50
	Day	7:00 a.m. - 10:00 p.m.	55
C (Commercial)	Night	10:00 p.m. - 7:00 a.m.	55
	Day	7:00 a.m. - 10:00 p.m.	60

(2) These zones are illustrated on Exhibit A, "Noise Zones, Town of Fairfax," attached to the ordinance codified in this chapter. Areas that are not covered on the map are included in Zone A.

(Prior Code, § 8.16.050) (Ord. 481, passed - -1981; Am. Ord. 529, passed - -1984)

§ 8.20.060 PROHIBITED ACTS.

(A) Street sales.

(1) Offering for sale, selling anything or advertising by shouting or outcry within any residential or commercial area or noise-sensitive zone of the town is prohibited, except by permit issued by the town.

(2) The provisions of this division (A) shall not be construed to prohibit the selling, by outcry, of merchandise, food and beverages at licensed sporting events, parades, fairs, circuses or other similar licensed public entertainment events.

(B) Animals and birds.

(1) Owning, possessing or harboring any animal which makes noise which is detectable on the complainant's property, and which is repeated intermittently for a duration of 15 minutes or more, is prohibited.

(2) In addition to being subject to the penalties of this chapter, animal noise disturbance cases will also be referred to the Humane Society.

(C) *Construction/demolition domestic power tools.*

(1) The operation of any tools or equipment used in construction or demolition work or in property maintenance work between the hours of 6:00 p.m. and 8:00 a.m. Monday through Friday or on weekends and holidays between the hours of 4:00 p.m. and 9:00 a.m. such that the sound therefrom creates a noise disturbance is prohibited.

(2) Operating or permitted the operation of any mechanically powered tools between the hours of 6:00 p.m. and 8:00 a.m. Monday through Friday and between 4:00 p.m. and 9:00 a.m. on weekends and holidays is prohibited.

(D) *Machinery.* Any motor, machinery or pump, such as swimming pool equipment and the like, shall be sufficiently enclosed or muffled and maintained so as not to create a noise or disturbance.

(E) *Motor vehicle horns.* It is unlawful for any person to sound a vehicular horn, except as a warning signal, pursuant to Cal. Motor Vehicle Code § 27001.

(F) *Motorized recreational vehicles operating off public right-of-way.*

(1) No person shall operate or cause to be operated any motorized recreational vehicle off a public right-of-way in a manner that the sound levels emitted therefrom violate the provisions of § 8.20.050.

(2) This division (F) applies to all motorized recreational vehicles, whether or not duly licensed and registered, including, but not limited to commercial or noncommercial racing vehicles, motorcycles, go-carts, campers and dune buggies.

(Prior Code, § 8.16.060) (Ord. 481, passed - -1981; Am. Ord. 770, passed 11-6-2013)

Editor's Note:

Nighttime limits shall apply to these time periods.

§ 8.20.070 EXEMPTIONS.

(A) The provisions of this chapter do not apply to:

(1) The emission of sound for the purpose of alerting persons to the existence of an emergency;
or

(2) The emission of sound in the performance of emergency work.

(B) Warning devices necessary for the protection of public safety, as, for example, burglar alarms, police, fire and ambulance sirens and the fire horn, are exempted from the provisions of this chapter.

(C) The provisions of this chapter do not apply to occasional outdoor gatherings, public dances, shows and sporting and entertainment events, provided the events are conducted pursuant to a permit or license issued by the town relative to the staging of the events.

(D) Operating or permitting the operation of any mechanically powered tools or equipment for construction, demolition or property maintenance work between 8:00 a.m. and 6:00 p.m. Monday through Friday, and 9:00 a.m. to 4:00 p.m. on weekends and holidays are exempt.

(E) Anyone operating mechanically powered tools during permitted hours shall use best practices to minimize flying dust and debris and to protect neighbors, pedestrians and others nearby from disturbed particulate matter.

(Prior Code, § 8.16.070) (Ord. 481, passed - -1981; Am. Ord. 731, passed 2-6-2008; Am. Ord. 770, passed 11-6-2013)

§ 8.20.080 PRIMA FACIE VIOLATION.

Any noise exceeding the noise level limits specified in § 8.20.050 shall be deemed to be prima facie evidence of a violation of the provisions of this chapter.

(Prior Code, § 8.16.080) (Ord. 481, passed - -1981)

§ 8.20.090 NOTICE OF VIOLATION.

At the discretion of a police officer, the owner or operator of a noise source, which, upon investigation, has been found to exceed permitted limits, shall be informed of the violation and asked to take corrective action to eliminate the violation. If the owner or operator fails to eliminate the violation, he or she may be cited for a misdemeanor violation.

(Prior Code, § 8.16.090) (Ord. 481, passed - -1981)

§ 8.20.100 VIOLATION; PENALTY.

Any person violating any of the provisions of this chapter is deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not to exceed \$500, or be imprisoned in the county jail for a period not to exceed six months, or by both the fine and imprisonment. Each day the violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

(Prior Code, § 8.16.100) (Ord. 481, passed - -1981)

§ 8.20.110 ADDITIONAL REMEDIES.

(A) As an additional remedy, the operation or maintenance of any device, instrument, vehicle or machinery in violation of any provision of this chapter, which operation or maintenance causes or creates sound levels exceeding the allowable limits as specified in this chapter, shall be subject to abatement as provided by law or by a restraining order or injunction, issued by a court of competent jurisdiction.

(B) By resolution, the Town Council may declare the expense of the abatement to be a lien against the property on which the nuisance is maintained, and the lien shall be made a personal obligation of the property owner.

(Prior Code, § 8.16.110) (Ord. 481, passed - -1981)

§ 8.20.120 EXCEPTION PROCEDURE.

The owner or operator of a noise source which exceeds any of the provisions of this chapter may apply for an exception from the regulations designated in this chapter, on the basis of undue hardship.

(A) *Administration.*

- (1) The Planning Director shall process and act on exceptions to this chapter.
- (2) The Planning Director shall:
 - (a) Review and act upon all applications for exceptions;

- (b) Review and act upon appeals from staff interpretation of this chapter;
- (c) Approve a set of rules of procedure for processing exceptions;
- (d) Establish the dates, times and place of meetings for official action under his or her authority;
- (e) Prescribe any reasonable requirements deemed necessary to minimize adverse effects on the community or the surrounding neighborhood as a condition to the exception; and
- (f) Prescribe a time limitation for the exception.

(3) (a) Decisions of the Planning Director may be appealed to the Town Council by any interested party, within ten working days of the action, on a form prescribed by the Town Clerk.

(b) The appeal shall be filed with a fee adopted by resolution of the Town Council.

(4) (a) The application shall be filed on a form prescribed by the Planning Director and accompanied by a fee set by resolution of the Town Council.

(b) A separate application shall be filed for each noise source; provided, however, that, several mobile sources under common ownership or several fixed sources on a single property may be combined into one application.

(B) *Reports of meetings.* Within ten days of any action taken, the Planning Director shall submit a written report to the Town Council, setting forth the nature of the application acted on, the action taken, the basis of the action taken and a reasonable time period for which the exception shall be effective.

(C) *Exception criteria.* The Planning Director may grant the exception as applied for only if it is found that:

(1) Additional time is reasonable and necessary for the applicant to alter or modify the activity; or

(2) The activity, operation or noise source will be of temporary duration and cannot be done in a manner that would comply with this chapter.

(D) *Application.* An application for an exception shall remain subject to prosecution under the terms of this chapter until an exception is granted.

(Prior Code, § 8.16.120) (Ord. 481, passed - -1981; Am. Ord. 770, passed 11-6-2013)

§ 8.20.130 DECLARED EMERGENCY.

In the case of any event that is declared by the Town Council, Town Manager, Police Chief, or Fire Chief to be a town wide or localized emergency, the limits on the hours of operation of all power tools shall be lifted.

(Ord. 770, passed 11-6-2013)