



TOWN OF FAIRFAX

STAFF REPORT

July 24, 2013

TO: Mayor and Town Council

FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Senior Planner
Arijit Sen, Planning Intern

SUBJECT: Proposed changes to Town Code Chapter 8.20, Noise Control, relating to the hours and use of power tools

RECOMMENDATION

(1) Open the Public Hearing on proposed amendments to Town Code Chapter 8.20, Noise Control, decreasing the hours during the day when power tools may be used and the process for requesting exceptions to the regulations.

(2) Direct staff to prepare an Ordinance incorporating the recommended amendments to Town Code Chapter 8.20 for adoption at the August 7, 2013 Town Council meeting.

DISCUSSION

The Fairfax Town Council, at its January 10th, 2013 meeting, approved Resolution 13-3 directing the Planning Commission to draft amendments to Noise Control Chapter 8.20 of the Town Code to further regulate the use of leaf blowers and/or other power equipment if appropriate.

Subsequently, the Planning Commission held public testimony at its Planning Commission meetings on March 21, April 18 and May 16, 2013 resulting in proposed amendments to the Noise Ordinance and gave direction to staff to prepare a draft Ordinance for Council adoption.

The amended draft Noise Ordinance attached addresses the following issues:

- Changing operation hours of all power equipment from 8am to 8pm, to 8am to 6pm only during weekdays and from 9am to 8pm, to 9am to 4m only during weekends and holidays.
- The Exception procedure in this chapter will be processed and granted by the Planning Director instead of the Town Manager.

FISCAL IMPACT

None

ATTACHMENTS

1. Town Council Resolution 13-3, directing the Commission to amend Chapter 8.20
2. Fairfax Municipal Code – Chapter 8.20 Noise Control with & without amendments
3. Minutes from the 3/21/13, 4/18/13, 5/16/13 and 6/20/13 Commission meetings
4. Planning Commission Resolution 13-4, forwarding recommended amendments

RESOLUTION NO. 13-3

A RESOLUTION OF INTENTION OF THE FAIRFAX TOWN COUNCIL DIRECTING THE PLANNING COMMISSION TO AMEND CHAPTER 8.20, NOISE, OF THE FAIRFAX TOWN CODE TO REGULATE THE USE OF LEAF BLOWERS AND OTHER POWER EQUIPMENT

WHEREAS, the Fairfax Town Council, having conducted a public hearing at their January 10, 2013 regular meeting, has directed staff to initiate an ordinance for consideration that will regulate the use of leaf blowers and other power equipment within the Town limits;

WHEREAS, the Fairfax Town Council has determined that it is in the best interests of the citizens of Fairfax to minimize the impacts of these blowers which have the potential to create significant clean-air and health impacts for the community because they disturb ground-borne particulate matter. Ground-borne particulate matter, when airborne, can be ingested by the general public potentially affecting long term health;

WHEREAS, the Fairfax Town Council has determined that the use of leaf blowers and other power equipment in the community negatively impacts the quality of life enjoyed by residents through the creation of excessive noise during times when residents are in their homes and/or on their property;

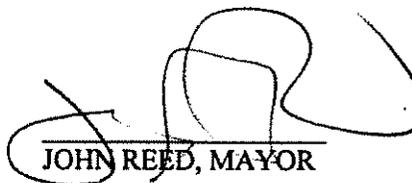
NOW THEREFORE, BE IT RESOLVED,

We, the Fairfax Town Council, direct staff to initiate a proposed amendment to Chapter 8.20, Noise, of the Fairfax Town Code, seeking to regulate the use of leaf blowers and other power equipment to include but not be limited to:

- 1) when the ordinance will take effect (i.e. 6 months after adoption);
- 2) limiting the times and days of the week the blowers and other power equipment can be operated;
- 3) encouraging persons operating leaf blowers or other power equipment to ensure that leaves, dirt and other debris are not blown onto adjoining private or public properties;
- 4) providing for an exception to the ordinance in the case of hardship due to owner infirmity or size of a property;
- 5) whether or not to include both leaf blowers and other power equipment in the regulations;
- 6) inclusion of an exemption during states of declared emergency as determined by the Town Manager;
- 7) whether authorized Town Employees operating leaf blowers on public property during regular business hours should be exempt from the regulations and,
- 8) providing for penalties for violations. We further direct Staff to send the proposed amendment to the Planning Commission for their review and possible action at the regular March 21, 2013, meeting of the Fairfax Planning Commission.

The foregoing resolution was duly presented and adopted at the regular meeting of the Fairfax Town Council of the Town of Fairfax held in said Town on the 10th day of January 2013 by the following vote to wit:

AYES: Bragman, Hartwell, O'Neil, Reed, Weinsoff
NOES: None
ABSENT: None


JOHN REED, MAYOR

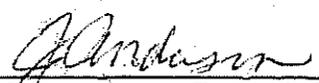
ATTEST: 
Judy Anderson, Town Clerk

EXHIBIT # 1

Fairfax, CA Municipal Code of Ordinances

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

§ 8.20.010 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.

<i>Exterior Noise Limits</i> (Levels not to be exceeded more than 7.5 minutes in any 15-minute period)			
Noise Zone	Time Period		Noise Level (dBA)
	A (Residential)	Night	
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 weekday hours of 8:00 p.m. and 8:00 a.m. 6pm and 8am~~ or on weekends or holidays between the hours of ~~8:00 p.m. and 9:00 a.m. 4pm and 9am~~ such that the sound therefrom creates a noise disturbance across a residential or commercial real property line, is prohibited.

(2) Operating or permitting the operation of any mechanically powered saw, sander, drill, grinder, lawn or garden tool or similar tool ~~tools between 6pm and 8am Monday through Friday and 4pm and 9am on weekends or holidays. between 8:00 p.m. and 8:00 a.m. or on weekends or holidays between the hours of 8:00 p.m. and 9:00 a.m. so as to create a noise disturbance across a residential or commercial real property line, is prohibited 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)

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) The operation of any mechanically powered tools for construction, demolition or property maintenance work of any tools or equipment used in construction, drilling, repair, alteration or demolition work, mechanically powered saw, sander, drill, grinder, lawn or garden tool, leaf blower, or similar tool between 8am and 6pm Monday through Friday and 9am to 4pm on weekends and holidays 8:00 a.m. and 8:00 p.m. on weekdays and 9:00 a.m. and 8:00 p.m. on weekends, are exempt.~~

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

§ 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)

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§ 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 Town-Manager-Planning Director shall process and act on exceptions to this chapter.~~

(2) ~~The Town-Manager 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 Town-Manager 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 Town-Manager 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 ~~Town-Manager 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 ~~Town-Manager 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)

§ 8.20.130

- A. In the case of any event that is declared by the Town Council, Town manager or Police Chief to be a Town wide or localized emergency, the limits on the hours of operation of all power tools shall be lifted.
- B. Copies of the foregoing ordinance shall, within fifteen days after its final passage and adoption, be posted in three public places in the Town of Fairfax, to wit:
 - 1. Bulletin Board, Town Hall offices;
 - 2. Bulletin Board, Fairfax Post Office;
 - 3. Bulletin Board, Fairfax Women's Club building
 - 4. Which places are designated for that purpose. The ordinance shall be in full force and effect thirty days from nad after its final passage and adoption.

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(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.

<i>Exterior Noise Limits</i> <i>(Levels not to be exceeded more than 7.5 minutes in any 15-minute period)</i>			
<i>Noise Zone</i>	<i>Time Period</i>		<i>Noise Level (dBA)</i>
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 weekday hours of 6pm and 8am or on weekends or holidays between the hours of 4pm and 9amsuch that the sound therefrom creates a noise disturbance , is prohibited.

(2) Operating or permitting the operation of any mechanically powered tools between 6pm and 8am Monday through Friday and 4pm and 9am on weekends or 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)

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 for construction, demolition or property maintenance work between 8am and 6pm Monday through Friday and 9am to 4pm on weekends and holidays are exempt.

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

§ 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)

§ 8.20.130

- A. In the case of any event that is declared by the Town Council, Town manager or Police Chief to be a Town wide or localized emergency, the limits on the hours of operation of all power tools shall be lifted.
- B. Copies of the foregoing ordinance shall, within fifteen days after its final passage and adoption, be posted in three public places in the Town of Fairfax, to wit:
 - 1. Bulletin Board, Town Hall offices;
 - 2. Bulletin Board, Fairfax Post Office;
 - 3. Bulletin Board, Fairfax Women's Club building
 - 4. Which places are designated for that purpose. The ordinance shall be in full force and effect thirty days from nad after its final passage and adoption.

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MINUTES

3. Minutes from the February 21, 2013 Planning Commission meeting.

The minutes from the February 21, 2013 Planning Commission meeting were continued to the meeting of April 18, 2013 due to a lack of a quorum of commissioners who had been present at the meeting.

PLANNING DIRECTOR'S REPORT

Planning Director Moore had been absent from the meeting and therefore a report had not been presented.

DISCUSSION ITEMS

4. Discussion/consideration of a draft Ordinance regulating leaf blowers and/or other gasoline powered landscaping maintenance equipment. Zoning - All residential and commercial zones districts in Town; Direction originates from Town Council Resolution No. 13-3 directing the Commission to include but not be limited to: ordinance effect date, permitted times and days of operation, hardship/exemption considerations and processing, inclusion of other gasoline powered equipment and penalties.

Senior Planner Neal announced that she would not present a staff report with which the commissioners were in agreement. Ms. Neal suggested that the commissioners discussed the materials provided by staff, take public testimony and then request staff to draft an ordinance for further discussion at the next meeting.

Chair Hamilton opened the public comment period and invited the single member of the public present at the time to speak.

Cindy Swift, Madrone Road, suggested that the ordinance should apply to the many kinds of outdoor equipment that created noise and not be restricted to leaf blowers for reasons she explained. Ms. Swift also said that there should be noise level limitations and both weekday and weekend use. She explained why she would not support permit use for equipment usage.

Chair Hamilton noted that the current ordinance covered decibel levels and gardening equipment and so she suggested that they discuss amending the ordinance rather than drafting a new document.

General discussion took place on restricting the use of outdoor equipment and limiting the hours of operation.

Chair Hamilton reopened the public comment period and John Sergeant, Madrone Road, discussed the petition that instigated the discussion of the ordinance. He noted that some of the signatures belonged to non-residents

Mr. Sergeant discussed leaf blowers and his recommendations that related to limiting hours of operation and decibels.

Chair Hamilton closed the public comment period.

The commissioners discussed air quality relating to leaf blowers.

There was general consensus that limiting the hours of operation might be the most effective way forward and that the decibel level should be measured from the receiving end, i.e. from the property line of the resident who made the complaint.

The commissioners discussed outreach and education measures to mitigate the problems of leaves being blown into the street.

Chair Hamilton requested that the commissioners be provided with the minutes of the previous discussion on the ordinance at the Council's 2008 meeting.

COMMISSIONER COMMENTS AND REQUESTS

Commissioner Ketcham requested that staff draw up a proclamation for Commissioner Lacques who had resigned from the commission after serving 8 years.....

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 8.30 p.m.

Kehrlein: AYE
Coler: AYE
Ezzet-Lofstrom: AYE
Ketcham: AYE

The motion passed unanimously and Commissioner Ketcham announced the appeal rights and then announced a 10 minute break at 9.45 p.m. Vice-Chair Lamotte and Commissioner Hall returned to the podium.

MINUTES

4. Minutes from the March 21, 2013 Planning Commission meeting.

M/s, Hall/Hall, Motion to approve the minutes with Commissioner Coler's name added to the list of absent commissioners and the correction of Commissioner Ezzet-Lofstrom's name.

AYES: All

DISCUSSION ITEMS

5. Discussion/consideration of a draft Ordinance regulating leaf blowers and/or other gasoline powered landscaping maintenance equipment. Zoning - All residential and commercial zones districts in Town; Direction originates from Town Council Resolution No. 13-3 directing the Commission to include but not be limited to: ordinance effect date, permitted times and days of operation, hardship/exemption considerations and processing, inclusion of other gasoline powered equipment and penalties.

Planning Director Moore discussed the Noise Element of the General Plan in relation to leaf blowers. He also discussed noise created by leave blowers and new information that had been presented regarding noise range. Mr. Moore summed up the discussion that had taken place at the previous meeting and suggested how the commissioners could move forward.

Commissioner Coler addressed enforcement. She also discussed information on leaf blowers from another City and possible time restrictions.

Vice-Chair LaMotte noted that information on the decibel levels of new leaf blowers was readily available.

General discussion on hours of operation and decibel levels took place.

Commissioner Hall said that he would support limiting the hours of operation. He suggested restricting the hours of commercial operators at weekend.

There was general consensus that banning commercial leaf blowing at weekends would not be supported.

Mr. Moore said that he was in a position to craft a draft amendment to the ordinance to present to the commissioners at the next meeting.

Vice-Chair LaMotte opened the public comment period.

Chris Lang, Canyon Road, commented on the current noise ordinance in relation to gas-powered tools. He also addressed decibel measurements and discussed the difficulty of enforcement.

Commissioner Hall said that he would support noise restrictions on all power tools, to which there was general consensus.

6. Discussion/consideration of Civic Engagement Through Digital Information Tools

This item was continued due to the lateness of the hour and the absence of Chair Hamilton who had proposed the discussion.

COMMISSIONER COMMENTS AND REQUESTS

There were no comments or requests.

PLANNING DIRECTOR'S REPORT

Planning Director Moore discussed the difficulties of staff shortages and the work that needed to be done in the Planning Department.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 10.50 p.m.

Respectfully submitted,

Joanne O'Hehir

Commissioner Kehrlein said this was a good application for compliance with the Second Unit Ordinance.

Commissioner Ezzet-Lofstrom and Ms. Neal discussed access to the garage if the Encroachment Permit were revoked at some point in the future.

M/s, Kehrlein/Ezzet-Lofstrom, Motion to approve Application # 13-3 for a Residential Second Unit Use Permit to convert a portion of the residence to a second unit and an Encroachment Permit to formalize the driveway to an existing second garage on the site at 696 Cascade Drive.

AYES: All

Chair Hamilton read the appeal rights.

7:47 p.m.

DISCUSSION ITEMS

4. Continued discussion/consideration of a draft Ordinance regulating leaf blowers and other powered equipment. Zoning - All residential and commercial zones districts in Town; Direction originates from Town Council Resolution No. 13-3 directing the Commission to include but not be limited to: ordinance effect date, permitted times and days of operation, hardship/exemption considerations and processing, inclusion of other gasoline powered equipment and penalties.

Planning Director Moore discussed the reasons that a resolution had not been presented and the purpose of the evening's discussions.

Senior Planner Neal presented the recommended changes to the draft ordinance, which she noted encompassed the previous discussions.

Mr. Moore discussed the request by Vice-Chair LaMotte to provide information to the public on the hazards of dust being "kicked up" by leaf blowers. He also discussed the Noise Element, which he noted would be revised.

Chair Hamilton and staff discussed wording in the ordinance that related to construction/use noise before the Chair opened the public comment period.

Cindy Swift, Madrone Road, discussed construction noise limitations and the problems that time limitations could cause homeowners. She requested clarification on the use of mechanically powered tools.

Planning Director Moore noted that the existing ordinance did allow for exceptions to the rules that affected time limitations.

Marsha Wildvine, Forest Avenue, said that she supported the restriction on the use of power tools. In response to Ms. Wildvine, Ms. Neal noted that the town did not restrict the amount of time for a project's construction.

Chair Hamilton closed the public comment period.

Chair Hamilton and staff discussed time constraints for construction hours and how exceptions were handled.

In response to Commissioner Ketcham, Ms. Neal said that it had been her understanding that the commissioners had not wished to distinguish between the hours of operation for commercial enterprises and homeowners.

General discussion took place on limiting the hours when noisy machinery could be used and whether there should be a distinction between the times when homeowners could use machinery and commercial usage.

There was general agreement that the times when noisy machinery could be used at weekends should be restricted, rather than restricting noise levels or the amount of time that a power tool could be used at any one time.

Discussion then followed on noise complaints. There was general agreement that action should not be taken as a result of a single noise complaint.

Commissioner Hall said that he would support limiting commercial operations at weekends. However, there was general consensus that multiple noise complaints at weekends should warrant investigation, which would act as a mitigating factor for commercial operations.

A request was made to staff to track the changes in the draft ordinance for the next report.

General agreement was reached that the hours of operation for power tools should be between 8 a.m. to 6 p.m., Monday through Friday, and 9 a.m. to 4 p.m. at weekends and holidays.

Commissioner Kehrlein discussed the difference between exterior and interior noise levels and how other towns dealt with exemptions. She said that she would forward materials to staff.

Staff will investigate the number of noise complaints they would recommend before action would be considered.

Chair Hamilton announced a 10-minute break at 9 p.m.

5. Review of 2010-2030 General Plan - Planning Commission / Design Review Board Program Worksheet and Implementation Priorities" (Chair Hamilton)

Planning Director Moore used a slide presentation to introduce the staff report. He explained that staff had drawn up a list of targets for the year, some of which had already been accomplished. Mr. Moore noted that it would be impossible for staff to meet all the targets due to

Ms. Neal discussed the conditions required by other agencies, and the reasons staff could support the application, which included the reason that the business would not generate more traffic than would be generated by similar businesses, with the recommended conditions of approval.

Jason O'Hara and Steve Davies, Applicants, said they would be happy to answer any questions that the commissioners might have.

In response to Commissioner Ezzet-Lofstrom, they discussed the consequences if a customer was delayed in picking up their pet. They said that it would involve higher fees and they noted that they did not intend to cage animals.

Mr. O'Hara and Mr. Davies discussed the use of hair traps to protect drains in response to Commissioner Ketcham.

Chair Hamilton opened and then closed the public comment period when no one came forward to speak.

Commissioner Kehlein said that the business would be a suitable use for the location.

M/s, Ezzet-Lofstrom/Ketcham, Motion to approve Application # 13-17, a request for a Use Permit to operate a dog washing facility with pet retail from an existing commercial building at 767 Center Boulevard, with the recommended conditions set forth in the staff report.

AYES: All

Chair Hamilton read the appeal rights and announced at 10-minute break.

10:06 p.m.

8. Continued discussion/consideration of a draft Ordinance regulating leaf blowers and other powered equipment and possible adoption of Resolution 13-4 recommending approval to the Town Council. Zoning - All residential and commercial zones districts in Town; Direction originates from Town Council Resolution No. 13-3 directing the Commission to include but not be limited to: ordinance effect date, permitted times and days of operation, hardship/exemption considerations and processing, inclusion of other gasoline powered equipment and penalties.

Planning Director Moore introduced Planning Intern Arijit Sen.

Mr. Sen noted that amendments had been added to the noise ordinance, which had been discussed at the previous meeting. Commissioner Ketcham discussed the changes in more detail.

The commissioners reviewed the draft Ordinance and made minor amendments and additions.

A discussion took place on the number of complaints that would elicit action by the Town.

In response to Chair Hamilton, Mr. Moore said that noise impacts had been addressed in the main by limiting the hours of use and thereby working towards the mitigation of disturbance caused to the environment and public health.

Commissioner Hall and Ms. Neal discussed the possible noise impacts caused by a resident using hand tools at an unacceptable hour. Commissioner LaMotte noted that the Ordinance addressed such problems.

Chair Hamilton opened the public comment period.

Marsha Wilde, Forest Avenue, discussed the problems they had encountered with a project that had caused construction noise over a long period of time. She said that it had been the reason that their tenants had moved out of their duplex. She discussed the damage caused to her personal life and health and she urged the commissioners to consider the long-term effects when providing building permits.

Mr. Moore discussed the particular project to which Ms. Wilde had referred. He noted that there was nothing in the Building Code that restricted the time in which a project needed to be completed, but that they would be recommending that the Town Council adopt the shorter hours of construction that the Commission suggested.

M/s, Ketcham/LaMotte, Motion recommending that the Town Council approve the draft Ordinance regulating leaf blowers and other powered equipment and adopt Resolution 13-4 with the modifications discussed to the "redlined version" with the following amendment to the Resolution:

WHEREAS, The Fairfax Planning Commission recommended Staff to change operation hours of all power equipment from 8 a.m. to 8 p.m. to 8 a.m. to 6 p.m. only during weekdays, and from 9 a.m. to 8 p.m. to 9 a.m. to 4 p.m. only during weekends; to:

WHEREAS, The Fairfax Planning Commission recommended Staff to change operation hours of all power equipment from 8 a.m. to 8 p.m. to 8 a.m. to 6 p.m. only during weekdays, and from 9 a.m. to 8 p.m. to 9 a.m. to 4 p.m. only during weekends and holidays.

AYES: All

MINUTES

9. Minutes from the May 20, 2013 Planning Commission meeting.

M/s, Kehrlein/Hall, Motion to approve the Minutes of May 20, 2013:

AYES: Ezzet-Lofstrom, Hall, Hamilton, Kehrlein, Ketcham

ABSTENTION: LaMotte

RESOLUTION NO. 13-4

**A RESOLUTION OF THE FAIRFAX PLANNING COMMISSION FORWARDING
PROPOSED CHANGES TO CHAPTER NOISE CONTROL, RELATING TO THE
HOURS AND USE OF POWER TOOLS**

WHEREAS, A resident of Bennet House, with background information, submitted a petition to the Town Council on October 3, 2012, to ban leaf blowers in the Town of Fairfax; and

WHEREAS, The Fairfax Town Council, on December 5, 2012, after taking public comments and holding a discussion on this matter, directed Planning Staff (per Town Code) to prepare a draft Resolution of Intention for their (Town Council's) approval directing staff to take this same matter before Planning Commission for a public hearing and/ or preparation of a draft ordinance for Council consideration; and

WHEREAS, The Fairfax Town Council, during the Town Council meeting on January 10th, 2013, approved Resolution No.13-3 directing the Planning Commission to amend Chapter 8.20, Noise, of the Town Code to regulate the use of leaf blowers and other power equipment if appropriate; and

WHEREAS, The Fairfax Planning Commission has determined that it is in the best interests of the citizens of Fairfax to minimize the impacts of any power tools which have the potential to create significant health impacts for the community because they disturb ground-borne particulate matter; and

WHEREAS, The Fairfax Planning Commission determined that the use of leaf blowers and other power equipment in the community negatively impacts the quality of life enjoyed by residents through the creation of excessive noise during times when residents are in their homes and/ or on their property;

WHEREAS, The Fairfax Planning Commission, has taken public testimony regarding proposed amendments to the Town Code Noise Ordinance regulating leaf blowers and other power equipment on March 21, 2013, April 18, 2013 and again on May 16, 2013; and

WHEREAS, The majority of those who spoke at these meetings were in favor of limiting hours of operation of leaf blowers- but not banning them, particularly on weekends and holidays;

WHEREAS, The Fairfax Planning Staff, during the Planning Commission meeting on May 16th, 2013, reviewed the minutes from both, March 21st, 2013 and April 18th, 2013 meetings and Resolution No. 13-3 adopted by the Town Council on January 10th, 2013, and gave direction to staff to prepare a draft Ordinance.

WHEREAS, The Fairfax Planning Commission recommended Staff to change operation hours of all power equipment from 8am to 8pm to 8am to 6pm only during weekdays, and from 9am to 8pm to 9am to 4pm only during weekends and holidays;

EXHIBIT # 4

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby forwards a draft Ordinance including changes to Chapter 8.20 the Noise Ordinance to the Town Council, with the recommended changes to §8.20.60(C), §8.20.70(D), §8.20.120[3(a), 4(a), (B), (C)] and added a new section §8.20.130 , for review and adoption.

The foregoing resolution was duly introduced and adopted on the 20th day of June, 2013, by the following vote:

AYES:

NOES:

ABSTAIN:

Shelly Hamilton, Chairperson

ATTEST:

James M. Moore
Director of Planning and Building Services