



Town of Christiansburg Planning Commission Monday, March 19, 2018 Agenda

Planning Commission

Chairperson

Jennifer D. Sowers

Vice-Chairperson

Hil Johnson

Non-Voting Secretary/ Planning Director

Andrew Warren

Other Members

Ashley Briggs
Catherine Clifton
Harry Collins
Mark Curtis
Jessica Davis
Jeananne Knies
Craig Moore
Ann Sandbrook

Town Manager

Randy Wingfield

Town Attorney

Guynn &
Waddell, P.C.

Planning Commission's Next Meeting:

*Monday, April 2, 2018
at 7:00 p.m.*

REGULAR MEETING

Planning Commission will meet in the Christiansburg Town Hall located at 100 E. Main Street on **Monday, March 19, 2018 at 7:00 PM** for the purpose of allowing the full Commission to review the following:

PLEDGE OF ALLEGIANCE

- 1) Public comments – 5 minute limit per citizen.
- 2) Approval of Planning Commission Minutes for February 20, 2018 meeting.
- 3) Public Hearing on an ordinance to amend Chapter 24, “Nuisances,” Article II. – Regulation of Noise, of the Christiansburg Town Code for the purpose of regulating loud or intrusive sounds or vibrations, modifying the exemptions to the ordinance, and providing for civil penalties in place of criminal penalties in the Town of Christiansburg.
- 4) Public Hearing on an ordinance to amend Chapter 42, “Zoning,” of the Christiansburg Town Code to permit a loudspeaker/sound amplification/outdoor sound system to be used in excess of Chapter 24 “Nuisances” Article II. – Regulation of Noise, by Conditional Use Permit in the Agricultural (A), Mixed Use: Residential - Limited Business (MU-1), Mixed Use: Residential - Limited Business - Limited Industrial (MU-2), Limited Business (B-1), Central Business (B-2), General Business (B-3), Limited Industrial (I-1), and General Industrial (I-2) zoning districts.
- 5) Other Business.

For a description of the preceding items or to view the Town's Zoning Map, Zoning Ordinance, and Future Land Use Map, please contact the Planning Department in the Christiansburg Town Hall, 100 East Main Street during office hours of 8:00 a.m. - 5:00 p.m. Monday through Friday. Written comments may be sent to the address below; please allow adequate mailing time. For any further assistance, please contact Andrew Warren, Planning Director at (540) 382-6120 ext.1130 or awarren@christiansburg.org.

DRAFT

**Christiansburg Planning Commission
Minutes of February 20, 2018**

Present: Catherine Clifton
Harry Collins
Hil Johnson, Vice-Chairperson
Jeananne Knies
Craig Moore
Ann Sandbrook
Jennifer D. Sowers, Chairperson
Andrew Warren, Secretary ^{Non-Voting}

Absent: Mark Curtis

Staff/Visitors: Will Drake, staff
Jared Crews, staff

Chairperson Sowers called the meeting to order at 7:01 p.m. in the Christiansburg Town Hall at 100 E. Main Street, Christiansburg, Virginia.

Public Comment

Chairperson Sowers opened the floor for public comment. With no comments, Chairperson Sowers closed the floor for public comment.

Approval of Planning Commission Minutes for January 29, 2018 Meeting

Chairperson Sowers introduced the discussion. Commissioner Moore made a motion to approve the January 29, 2018 Planning Commission meeting minutes. Commissioner Sandbrook seconded the motion, which passed 7-0.

Public Hearing on an ordinance to amend Chapter 42-Zoning, Article I.- In General, Section 42-1. – Definitions, of the Christiansburg Town Code to revise and clarify the definition of *Kennel*.

Chairperson Sowers opened the public hearing.

Mr. Warren stated the proposed change was intended to make the definition of “kennel” more enforceable. Mr. Warren stated the current ordinance addresses adult pets but does not define what age constitutes an adult pet. Mr. Warren stated the amendment would clarify that dogs and cats are considered adults at six months of age. Mr. Warren noted a residence with multiple pet litters would be considered a commercial use, which is already addressed in the existing code.

The following amendment was proposed:

“kennel means a place prepared to house, board, breed, handle or otherwise keep or care for dogs and/or cats for sale or in return for compensation or any place where more than a total of four dogs and/or cats over six months of age are kept for any purpose.”

Vice-chairperson Johnson noted the change to the ordinance was similar to the language used by other localities studied in preparation for the public hearing.

Action on an ordinance to amend Chapter 42-Zoning, Article I.- In General, Section 42-1. – Definitions, of the Christiansburg Town Code to revise and clarify the definition of *Kennel*.

Vice-Chairperson Johnson motioned to recommend Town Council approve the amendment to Chapter 42-Zoning as drafted. Commissioner Sandbrook seconded the motion, which passed 7-0.

Other business.

Chairperson Sowers opened the discussion.

Mr. Warren stated the Planning Commission’s public hearing for the noise ordinance amendment would be held March 19, 2018. Mr. Warren noted the draft ordinance would allow the possibility to grant a Conditional Use Permit for noise exceeding permitted levels.

Mr. Warren stated two open meetings would be held on March 1 and March 8, 2018 before the Planning Commission public hearing. Mr. Warren stated the meetings would allow the public to comment and provide feedback on the proposed changes.

Other business – (continued).

Commissioner Moore asked if a Conditional Use Permit would be required for any single instance of noise exceeding the allowable levels. Mr. Warren stated recurrent noise exceeding the noise ordinance would require a Conditional Use Permit, but one-time special events would follow the regulations and allowances currently in place.

Commissioner Moore stated additional property owners may need notification of the public hearings as more than just adjacent property owners could be affected by the noise. Mr. Warren stated a posting to the property, letters to adjacent property owners, social media, and newspaper advertisements would be used to provide notice of public hearings for a Conditional Use Permit related to noise.

Commissioner Collins asked about Town Council's desire to research homestay venues in Christiansburg. Mr. Warren stated the Planning Intern has researched the issue and found around 60 residences available online for homestay within Christiansburg. Mr. Warren noted some of the residences only have a few reviews and may not be frequented very often. He noted that it may be difficult to estimate the total number of stays per year.

Commissioner Knies stated Blacksburg created regulations for homestays a couple of years ago. Mr. Warren stated Christiansburg would need to determine how it desired to address homestay residences with possible options including regulations through administrative review and the use of a Conditional Use Permit.

Commissioner Collins stated the Town would be looking into some of the towing yards that are not currently in compliance with town regulations. Commissioner Collins stated Town Council may ask Mr. Warren for an update on these facilities at the next meeting Town Council meeting.

Commissioner Sandbrook announced Downtown Christiansburg, Inc. is seeking board members and is holding a "Talk of the Town" event Thursday, February 22, 2018 at 100 West Main Street at 6:30 p.m. Commissioner Sandbrook noted Mockingbird Café will be providing refreshments.

Other business – (continued).

Vice-Chairperson Johnson announced Virginia Tech's Big Event will be held April 7, 2018.

Vice-Chairperson Johnson noted Pizza Inn installed its approved electronic messaging sign.

Mr. Warren noted the regional planning commissioner training event will be held April 19, 2018.

With no further business, Chairperson Sowers adjourned the meeting at 7:29 p.m.

Jennifer D. Sowers, Chairperson

Andrew Warren, Secretary Non-Voting



ESTABLISHED
NOVEMBER 10, 1792

INCORPORATED
JANUARY 7, 1833

MAYOR
D. MICHAEL BARBER

COUNCIL MEMBERS
SAMUEL M. BISHOP
HARRY COLLINS
STEVE HUPPERT
MERISSA SACHS
HENRY SHOWALTER
BRADFORD J. "BRAD" STIPES

TOWN MANAGER
RANDY WINGFIELD

DIRECTOR OF
FINANCE/TOWN TREASURER
VALERIE L. TWEEDIE,
CPA, CFE, CGFM

CHIEF OF POLICE
MARK SISSON

CLERK OF COUNCIL
MICHELE M. STIPES

TOWN ATTORNEY
GUYNN & WADDELL, P.C.

Town of Christiansburg, Virginia 24073

100 East Main Street ~ Telephone 540-382-6128 ~ Fax 540-382-7338

Memorandum

Date: March 16, 2018

To: **Planning Commission**

From: Will Drake, Planner II

Thru: Andrew Warren, Planning Director

Re: Public Hearing for Noise Ordinance Amendments

Overview

The Planning Commission will hold a public hearing on Monday, March 19, 2018 to receive comment on the following two ordinances.

1. A proposed ordinance to amend Chapter 24, "Nuisances," Article II. – Regulation of Noise, of the Christiansburg Town Code for the purpose of regulating loud or intrusive sounds or vibrations, modifying the exemptions to the ordinance, and providing for civil penalties in place of criminal penalties in the Town of Christiansburg.
2. A proposed ordinance to amend Chapter 42, "Zoning," of the Christiansburg Town Code to permit a loudspeaker/sound amplification/outdoor sound system to be used in excess of Chapter 24 "Nuisances" Article II. – Regulation of Noise, by Conditional Use Permit in the Agricultural (A), Mixed Use: Residential - Limited Business (MU-1), Mixed Use: Residential - Limited Business - Limited Industrial (MU-2), Limited Business (B-1), Central Business (B-2), General Business (B-3), Limited Industrial (I-1), and General Industrial (I-2) zoning districts.

Background

Christiansburg last revised its noise ordinance in 2010 in recognition of a Virginia State Supreme Court Ruling (Tanner et al. v. City of Virginia Beach). The Town — along with many localities across the state — revised the standard to issue a citation from "loud and unnecessary noise" to "plainly audible." There were few issues with the enforcement of the noise ordinance prior to the 2010 revisions and until recently there have been few issues since the revision.

Over the last year, the enforcement of violations related to dog barking has become a consistent issue due to complaints in one specific neighborhood. Since 2016, the

noise on residential properties in the vicinity of the Starlite Drive-In Theater has also become an issue the current code has not been able to adequately address. In reviewing the noise ordinance, staff believes this is an opportunity to improve our noise ordinance by making it clearer and simpler.

In March 2016, the Town received a complaint from a resident about excessive noise from the Starlite Drive-In Theater. Town staff responded and discovered the Starlite had installed a new sound system. The business had removed the individually-mounted car speakers and replaced them with an amplified, outside speaker system. The new amplified speaker system led to additional neighborhood complaints during the remainder of Starlite's 2016 season, as the Town attempted to work with the business to find a suitable volume level.

During this time, the Town's attorneys determined the Starlite was not exempt from the noise ordinance because the new speaker system was not necessary to the business, as the Starlite had operated for decades without it, and customers could listen to the movie on an FM frequency through their car stereos or via other potential means, such as transistor radios provided to patrons with a deposit. For more than a year, the Town received resident complaints without citing the Starlite for a noise violation. Instead, Christiansburg Police continued to work with the business to find a solution that worked for both its customers and its surrounding neighbors.

However, in May 2017, Christiansburg Police responded to the home of a complainant, where officers could plainly and audibly hear a movie being played more than 100 feet away. A summons was issued to the Starlite for violating the ordinance. The resulting litigation prompted the Town to re-evaluate its existing ordinance to see how it could better serve both businesses and residents.

Draft Ordinance

The Town has sought to create a noise ordinance that strikes a balance between the sometimes divergent interests of businesses and residents. The proposed ordinance is intended to provide a better-defined, narrowly-tailored scope of noise to be regulated by the Town of Christiansburg. The proposed ordinance includes additional defined terms and further refines several existing definitions. Many of the listed exempted uses have been removed and the penalty section has also been revised. Violations of the noise ordinance are now subject to civil penalties and fines and are no longer criminal offenses. Based on feedback received from the community meetings, the proposed ordinance also introduces A-weighted decibel (dBA) limits for general noise prohibitions, loudspeaker/sound system restrictions, and animal noise. Also, with this change to dBA limits, the distance of noise travel has been taken out as this was

Finally, the ordinance introduces a conditional use permit process to allow for the reasonable use of property which may exceed the noise ordinance on a recurrent basis. A special event permit may still be granted for single events that may exceed the noise ordinance within the public right-of-way or publicly-owned properties, but the proposed ordinance now allows for uses which may exceed the noise ordinance on a recurrent basis to request a conditional use permit. The purpose of the conditional use permit is to allow a specific property/use the ability to mitigate potential noise impacts with specific conditions the Town Council may impose on the conditional use permit. The draft noise ordinance is thus accompanied by a proposed amendment to the Zoning Ordinance to allow for sound in excess of the noise ordinance, by conditional use permit in the Agricultural (A), Mixed Use: Residential - Limited Business (MU-1), Mixed Use: Residential - Limited Business - Limited

Industrial (MU-2), Limited Business (B-1), Central Business (B-2), General Business (B-3), Limited Industrial (I-1), and General Industrial (I-2) zoning districts.

Public Comments/Community Meetings

Staff has received a number of phone calls and emails regarding the noise ordinance. Please find attached: Correspondence received as of 3-16-18. Community meetings were held on March 1 and March 8, 2018 to receive input on the proposed ordinance. Following each meeting, the ordinance was revised based on the comments received. Below is a summary of the meeting and revisions made after the meeting:

Public Meeting #1 – March 1, 2018

Overview - There were approximately 20 people in attendance at the public meeting on March 1, 2018. Public comments included questions of whether the proposed ordinance was fair to businesses and concern was expressed with the \$750 application fee for a conditional use permit. Citizens inquired what criteria would be used to assess a conditional use permit request and questioned the fairness of evaluating conditional use permits. Several speakers noted the Starlite has been operating before most of the nearby residences were built. Questions were also raised as to the interpretation of plainly audible and if decibels would be used to determine excessive noise levels. Residents noted they lived near the Starlite for many years without issue until the sound system was changed.

Revisions - Following input from the first community meeting, the following changes were made to the proposed ordinance:

- Additional specification was added to the definition of *plainly audible*.
- The bounds of restricted noise was broadened to be either 100 feet from the source of the noise or from another property, whichever distance was greater.
- Redundant exemptions already exempted or preempted by Federal or State law were removed from the list of exemptions.
- A process was added to allow a person who was issued a ticket to waive a trial and pay the fine.

Public Meeting #2 – March 8, 2018

Overview - There were approximately 100 people in attendance at the public meeting on March 8, 2018. Staff reviewed the revisions to the noise ordinance and reviewed the existing criteria for evaluating conditional use permits in the zoning ordinance. Staff stated that the existing criteria would be used to evaluate any new conditional use permits submitted under the proposed ordinance. Speakers voiced support for the Starlite Theatre and many noted the drive-in was a unique, family-friendly business. Multiple speakers asked the town, businesses, and the neighbors to work together to find a reasonable solution. Several questioned if the ordinance was supportive of local businesses and noted the \$750 application fee for a conditional use permit. Speakers also questioned the subjective measure of plainly audible and many requested using decibel-based regulations in order to make the regulations objective. Several speakers asked for the conditions that might be imposed on a conditional use permit to instead be written into the ordinance. Some suggested allowing a later start time to the speaker system restrictions during the weekend. Also, several citizens noted the linear distance measures were unreasonable and noted sound can easily be heard from much farther away than 50 or 100 feet.

Revisions - Following public input from the second community meeting, the following changes were made to the proposed ordinance:

- *A-weighted decibel (dBA), decibel, and sound level meter* were added as definitions.
- *Enclosed dwelling unit and enclosed vehicle* were added as definitions.
- The definition of *plainly audible* was further refined.
- *Public property* and *residential area* were removed as defined terms.
- Decibel levels were added as a criteria for prohibited noises.
- Enclosed dwelling unit and enclosed vehicle were added as a criteria for prohibited noise in certain instances.
- Noise prohibitions on speakers/sound systems were reduced for Friday and Saturday nights. The 10 PM start time for these restrictions was extended to 11:00 PM. The AM time for Saturday and Sunday from 7:00 AM to 8:00 AM to allow quieter morning hours.
- The prohibition on the duration of animal noise was specified to be 5 minutes, replacing *sustained or repetitive*.
- The 50-foot distance measurement from car stereo noise was removed and the *plainly audible* standard was applied to an enclosed car or the dwelling of another person.
- The 50-foot distance measurement for alarm systems was removed and the *plainly audible* standard was applied to the dwelling unit or business establishment of another person.
- The exemption for school athletic facilities was revised to apply to lawful activities on governmental and school facilities.
- The exemption for mechanical equipment, construction related equipment and landscaping during certain hours have been added back in and revised from the existing ordinance.
- A severability clause was added to the proposed ordinance.
- Details were added regarding the enforcement of the ordinance with respect to law enforcement officers and the use of sound measurement devices.

Next Steps

As a reminder, the Planning Commission Public Hearing will be held Monday, March 19, 2018 at 7 p.m. and a recommendation by the Planning Commission to Town Council is scheduled for the April 2, 2018 meeting. Town Council's Public Hearing is scheduled for April 10, 2018 at 7p.m. and action is scheduled for April 24, 2018. Please contact staff with any comments and questions in your preparation for Monday's meeting.

List of attachments

1. Draft Noise Ordinance – dated March 16, 2018
2. Draft Zoning Ordinance – dated February 16, 2018
3. Information on Christiansburg's Noise Ordinance – information provided to public between the March 1, 2018 and the March 8, 2018 public meetings.
*Please note a number of items mentioned for the ordinance have changed based on comment received at the public meetings.
4. Starlite Drive-In Official Proposal: Noise Ordinance for Businesses (handed out at the 3-8-16 public meeting)
5. Correspondence received as of 3-16-18

WORKING DRAFT
ORDINANCE NO. ____

AT A REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF CHRISTIANSBURG, VIRGINIA, HELD AT THE CHRISTIANSBURG TOWN HALL ON TUESDAY _____, 2018 AT 7:30 PM

AN ORDINANCE OF THE TOWN OF CHRISTIANSBURG, VIRGINIA, AMENDING SECTIONS 24-30. – DECLARATION OF POLICY, 24-32. – DEFINITIONS, 24-33. – LOUD NOISES PROHIBITED, 24-34. – EXEMPTIONS FROM ARTICLE, 24-35. – PENALTIES, 24-36. – UNDUE HARDHIP WAIVER, 24-37. – OTHER REMEDIES, OF ARTICLE II, REGULATION OF NOISE, CHAPTER 24, NUISANCES, OF THE CHRISTIANSBURG TOWN CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town’s current noise ordinance was adopted in 2010; and

WHEREAS, the Town desires to update its noise ordinance and provide for civil penalties in place of criminal penalties; and

WHEREAS, as part of the update, the Town sought public input from its residents and businesses concerning the appropriate levels of noise and how noise should be regulated in the Town to promote the peace and public health, safety, and welfare; and

WHEREAS, the Town Council has considered the public’s comments and suggestions;

NOW THEREFORE, BE IT HEREBY ORDAINED by the Council of the Town of Christiansburg that the aforementioned sections of Article II, “Regulation of Noise,” Chapter 24, “Nuisances,” are hereby amended and reenacted as follows:

Chapter 24 – NUISANCES

* * *

ARTICLE II. - REGULATION OF NOISE

Sec. 24-29. - Short title and application of article generally.

This article shall be known and referred to as the "Noise Ordinance of the Town of Christiansburg, Virginia." It shall be applicable to the control of noises originating within the jurisdictional limits of the town.

Sec. 24-30. - Declaration of policy.

At certain intensity levels, ~~noises~~sound and vibration constitutes noise which can be detrimental to the health, welfare, safety, peace, and quality of life of the citizens of Town of Christiansburg, and in the public interest, noise as defined herein should be controlled. Therefore, it is hereby declared to be the public policy of the Town of Christiansburg to promote an environment for its citizens that is free from ~~excessive, unnecessary, harmful, or~~

~~annoying noises, which jeopardizes their the public health, safety, or welfare or degrades the quality of life within the Town of Christiansburg.~~

Sec. 24-31. - Administration and enforcement.

This article shall be enforced and administered by the town chief of police, with the assistance of other town departments, as required.

Sec. 24-32. - Definitions.

For purposes of this article, the following words and phrases shall have the meaning assigned to them in this section.

Chief means the chief of police of the town, or his duly appointed designees.

Conditional use permit means, in this context of this article, a permit granted under the town's zoning ordinance allowing an outdoor loud speaker or sound amplification system as a conditional use in a particular zoning district subject to conditions imposed by the town council.

A-weighted decibel (dBA) means the sound pressure level in decibels as measured on a sound level meter (SLM) using the A-weighting filter. A sound level meter that is set to measure A-weighted decibels operates with similar sensitivity to different frequencies as does the average normal human ear for sounds of moderate intensity levels.

Decibel (dB) means a physical, quantitative, logarithmic scale of measurement for sound pressure levels that is obtained with a sound level meter.

Dwelling unit means one or more rooms arranged, designed, or intended to be occupied as separate living quarters having rigid exterior wall structures ~~by one or more persons and including permanent provisions for living, sleeping, eating, cooking and sanitation.~~

Emergency work means any work performed for the purpose of preventing or alleviating physical injury or illness or property damage including, but not limited to, work performed by public service companies inspecting and repairing utilities to restore service to customers, snow removal, repairs to roads, bridges, and highways, and the operation of public safety and emergency vehicles.

Enclosed dwelling unit means the dwelling unit has its doors and windows closed.

Enclosed vehicle means that all operable doors, windows, sunroof, and other openings of the vehicle are closed.

Motor vehicle means every vehicle defined as a motor vehicle by Code of Virginia, § 46.2-100 (1950), as amended.

Noise means any sound or vibration which violates this article.:

(1) ~~Endangers or injures the safety or health of any person;~~

(2) ~~Annoys or disturbs a reasonable person of normal sensitivities; or~~

~~(3) Endangers or injures personal or real property.~~

Owner means the person owning, controlling, or possessing land (such as a tenant), premises or property.

Person means any individual, partnership, corporation, firm, association, trust, estate, society, club, private institution, group of persons acting in concert, organization or agency, or any legal successor, representative, agent or agency of the foregoing. The term "person" shall not include the federal, state, county, town, city or local government, or any agency or institution thereof.

Plainly audible means any obvious sound that can be detected heard or felt by a person law enforcement officer using his unaided hearing faculties with or without a hearing aid or other hearing-assistive device. The sound must not be so faint that its source cannot be identified.

Property boundary means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned, leased, or otherwise legally controlled by one person from that owned, leased, or otherwise legally controlled by another person, including intra-building real property divisions.

Public property means any real property owned or controlled by the town or any other governmental entity.

Residential area refers to any area of the town, regardless of zoning district, where a person maintains a permanent or temporary place of abode.

Sound means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that cause compression and rarefaction of that medium, and which propagates at finite speed. The characterization or description of a sound may include any characteristic parameter of such sound, including duration, intensity, and frequency, and timbre, as well as any vibration that results from the sound.

Sound-amplifying equipment means any machine, device, or equipment for the amplification of the human voice, music, or any other sound. The term "sound-amplifying equipment" shall not include warning devices on authorized emergency vehicles or horns or other warning devices on other vehicles used only for traffic-safety purposes.

Special event permit means a written document issued by the town manager or his/her designee in response to a written application to use the public right-of-way and/or public property for a special event, which may include a temporary exemption from the noise ordinance as described therein, subject to conditions designed to mitigate the effects of the planned noise upon the public.

Sound level meter means a battery-powered device containing a measurement microphone and additional electronic circuitry for transduction and quantification of sound pressure levels as propagated in an air medium. Any sound level meter applied for the purposes of this article

shall meet the requirements of the latest version of ANSI S1.4, comprising either a Type 1 or Type 2 meter, and perform in accordance with all specifications of Attachment A of the Virginia Department of General Services, Division of Purchases and Supply Directive 2014-12-06 for "Datalogging Sound Meter Device," as may be amended from time to time.

Sec. 24-33. - Loud Noises prohibited.

It shall be unlawful for any person or owner to:

- (1) ~~Use, operate, or play a radio, phonograph, television, record, compact disc or tape player, musical instrument, loudspeaker, sound-amplifying equipment or other machine, or device capable of producing or reproducing sound in such a manner or with such volume or duration~~ Authorize, permit, operate, or cause any source of sound to produce sound that: it is plainly audible:
 - a. ~~is plainly audible inside the confines of the another person's enclosed dwelling unit, house or apartment of another person; or~~
 - b. ~~At a distance of 50 feet or more from the device except for devices permitted to be used at public parks or recreation fields, sporting events, school-sponsored activities on school grounds, or duly authorized parades, public functions or commemorative events. measures at or in excess of sixty-five (65) A-weighted decibels (dBA) at any point located on the property of another person.~~
- (2) ~~Allow noise Use, operate, or play any loudspeaker, sound-amplifying equipment, or other machine, instrument, or device capable of producing or reproducing sound in such a manner or with such volume or duration between the hours of 10:00 p.m. and 7:00 a.m., except for Friday and Saturday evenings when the noise limitation shall be from 11:00 p.m. until 8:00 a.m. the following day, that: is plainly audible either inside the confines of the dwelling unit, house or apartment of another person or at a distance of 50 feet or more.~~
 - a. ~~is plainly audible inside the dwelling unit of another person; or~~
 - b. ~~At a distance of 50 feet or more from the device or heard on the property of another, whichever distance is greater, except as permitted pursuant to a conditional use or event permit issued by the town. measures at or in excess of fifty-five (55) A-weighted decibels (dBA) at any point located on the property of another person.~~
- (3) ~~Allow any animal (except farm animals in agricultural districts) to create noise that it is plainly audible at least once a minute for ten consecutive minutes:~~
 - a. ~~Inside the confines of the dwelling unit, house, or apartment of another; or~~
 - b. ~~At a distance of 50 feet or more from the animal.~~

~~This provision shall not apply if the noise is due to harassment of or injury to the animal, or due to a trespass upon the premises where the animal is located.~~

Own, keep, possess, or harbor one or more animals which make continuous, intermittent, or repetitive sound for more than five consecutive minutes that is:

 - a. plainly audible inside the dwelling unit of another person; or

- b. measures at or in excess of sixty-five (65) A-weighted decibels (dBA) at any point located on the property of another person.
- ~~(4) Operate, install, have or permit on the inside or outside of any store, shop, business establishment, warehouse or commercial building, any loudspeaker, sound-amplifying equipment or other sound-producing or reproducing device capable of emitting music, noise, sounds, tapes or voice in such manner that it is plainly audible on any public sidewalk or street, unless it is used only intermittently for announcing or paging an individual or unless it signals the ringing of a telephone, danger from smoke, a fire or a burglary or the beginning or stopping of work or school, or unless it is operated in accordance with conditions of zoning.~~
- ~~(5) Play, or permit the playing of, any sound producing equipment (i.e. radio, stereo, tape player, compact disc player, loud speaker, sound-amplifying equipment or other electronic device or mechanical equipment used for the amplification of sound), within a motor vehicle and which that is: plainly audible from outside the motor vehicle at a distance of 50 feet or more from the vehicle. This provision shall not apply to sirens, loud speakers and emergency communications radios in public safety vehicles; nor shall this provision apply to motor vehicle alarms or other security devices.~~
 - a. plainly audible within another person's enclosed vehicle; or
 - b. plainly audible within the dwelling unit of another person.
- ~~(6) Create plainly audible noise in residential areas between 10:00 p.m. and 7:00 a.m. in connection with the loading and unloading of refuse, waste or recycling.~~
- ~~(7) Create plainly audible noise in residential areas between 10:00 p.m. and 7:00 a.m. in connection with lawn care, leaf removal, gardening, tree maintenance or tree removal, and other landscaping, lawn or timbering activities.~~
- ~~(8) Operate, or cause to be operated, any equipment used on an active site in the construction, repair, alteration or demolition of buildings, streets, roads, alleys or appurtenances thereto between the hours of 10:00 p.m. and 7:00 a.m. The use of construction vehicles as transportation to and from an active construction site may be done at any time.~~
- ~~(9) Repair, rebuild or modify any motor vehicle or other mechanical equipment or device between the hours of 10:00 p.m. and 7:00 a.m. in a manner so as to be plainly audible at a distance of 50 feet or more from the source.~~
- ~~(10) Fail to deactivate an alarm system plainly audible at a distance of 50 feet or more from such alarm in the dwelling unit of another person within 30 minutes of hearing the alarm or receiving notice of the alarm's activation.~~

Sec. 24-34. - Exemptions from this article.

The following specific activities or sources of noise shall be exempt from the regulations set forth in this article:

- ~~(1) Sounds generated in business, industrial and mixed-use zoning districts that are necessary and incidental to the uses permitted therein.~~

- ~~(2) Sounds generated from any agricultural activity or agribusiness.~~
- ~~(3)(1) Activities or land use for which an event permit or conditional use permit has been issued or an exception has been granted by the town council so long as the noise produced is in compliance with the conditions listed in the event or conditional use permit;-~~
- ~~(4)(2) Activities for which the regulation of noise has been preempted by federal law, exempted by state law, or which the town has no authority to regulate;-~~
- ~~(5)(3) Sounds emitted in the performance of emergency work or for the purpose of alerting persons to the existence of an emergency;-~~
- ~~(6) Sounds generated by the performance of any governmental function.~~
- ~~(7)(4) Lawful activities on, or in, public and school athletic governmental and school facilities; and.~~
- ~~(8) Activities which are part of any town- or state-sponsored festival or activity.~~
- ~~(9) Military activities of the Commonwealth of Virginia or of the United States of America.~~
- ~~(10) Religious services, religious events or religious activities or expressions, including, but not limited to, music, singing, bells, chimes and organs, that are a part of such service, event, activity or expression.~~
- ~~(11) Religious or political gatherings and other activities~~
- ~~(5) Activities protected by the First Amendment to the United States Constitution.~~
- ~~(6) Mechanical equipment including heat pumps, air conditioners, furnaces, pool pumps, and emergency generators, operated in accordance with the manufacturer's specifications;~~
- ~~(7) Activities related to construction, repair, remodeling, grading, demolition, or other improvement to real property between the hours of 7:00 AM and 10:00 PM.~~
- ~~(8) Operation of lawn and landscaping equipment between the hours of 7:00 AM and 10:00 PM.~~
- ~~(12) Sounds generated from or incidental to emergency repairs to public and private utilities.~~
- ~~(13) Sounds generated from or incidental to any emergency public works function.~~
- ~~(14) Sounds generated from construction and maintenance to public roads, highways and bridges.~~
- ~~(15) Sounds generated from erosion and sediment mitigation.~~
- ~~(16) Sounds generated from airplanes and trains.~~

Sec. 24-35. - Penalties.

(a) Any person violating any of the provisions of this article shall be subject to the following civil penalties:

- (1) For the first offense, ~~either imprisonment of not more than ten days or a fine of not less than \$75250.00.~~
- (2) For the second offense ~~within 12 months of a previous conviction, either imprisonment of not more than ten days or a fine between \$250.00 and \$750.00.~~
- (3) ~~For the third offense within 24 months of a previous conviction, either imprisonment of not more than ten days or a fine between \$500.00 and \$1,000.00.~~
- (4) ~~For the fourth or and each subsequent offense within 24 months of a previous conviction, the person shall be guilty of a Class 1 misdemeanor a fine of \$500.00.~~

(b) Each separate act on the part of the person violating this article shall be deemed a separate offense subject to a separate fine, and each day a violation is permitted to continue unabated shall constitute a separate offense.

(c) The person ~~operating or controlling a~~ creating, controlling, or allowing the noise source shall be guilty of any violation caused by that source subject to the civil penalty. If that person cannot be determined, any owner, tenant, or resident ~~physically present in, or on, of the~~ property where the violation is occurring is rebuttably presumed to be guilty of the violation the violator and shall be subject to the civil penalty.

(d) Any person summoned or issued a ticket for a noise violation may make an appearance in person or in writing by mail to the department of finance of the town prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil fine established herein.

(~~e~~) In addition to, and not in lieu of, the ~~criminal~~civil penalties prescribed in this section, the town may apply to the circuit court for an injunction against the continuing violation of any of the provisions of this article, and the town may seek any other remedy or relief authorized by law.

Sec. 24-36. - ~~Undue hardship waiver~~Reserved.

(a) ~~Any person responsible for a noise source may apply to the town manager or town designee for a waiver, or partial waiver, from the provisions of this article. The town manager or town designee may grant such waiver, or partial waiver, upon a finding that any of the following circumstances exists:~~

- (1) ~~The noise does not endanger the public health, safety or welfare; or~~
- (2) ~~Compliance with the provisions of this article from which a waiver is sought would produce serious economic hardship without producing substantial benefit to the public.~~

(b) ~~In determining whether to grant such waiver, the town manager or town designee shall consider the time of day the noise will occur, the duration of the noise, whether the noise is~~

intermittent or continuous, the technical and economic feasibility of bringing the noise into conformance with this article, and such other matters as are reasonably related to the impact of the noise on the health, safety, and welfare of the community and the degree of hardship which may result from the enforcement of the provisions of this article.

(c) No waiver, or partial waiver, issued pursuant to this article shall be granted for a period to exceed one year, but any such waiver, or partial waiver, may be renewed for successive like periods if the town manager or town designee shall find such renewal is justified pursuant to the standards set forth in this article. No renewal shall be granted except upon written application therefor.

Sec. 24-37. – Other remedies; severability; enforcement.

(a) No provision of this article shall be construed to impair any common law or statutory cause of action or legal remedy of any person for injury or damage to person or property arising from violation of this article or arising from noise that either is exempted or does not violate this article. In addition to the civil penalties in this article, the town may seek an injunction to enjoin any person from continuing to violate this ordinance.

(b) In the event that any portion of this article is declared unconstitutional, invalid, or unenforceable for any reason, such declaration shall not affect the validity or enforceability of any other provision in this article.

(c) The provisions of this article are cumulative and not exclusive and shall supplement and be in addition to any noise standards that may be adopted as part of the zoning ordinance of the Town of Christiansburg.

(d) Sound level measurements in A-weighted decibels (dBA), shall be made with a sound level meter that meets or exceeds the standards for such equipment as established by the Code of Virginia and any regulations promulgated thereunder. The results obtained by use of such equipment shall be accepted as prima facie evidence of the decibel level of the sound in any court or legal proceeding where the decibel level of the sound is at issue. If any question arises concerning the calibration or accuracy of such equipment used to determine the decibel level of sound, a certificate, or a true copy thereof, showing the calibration or testing for accuracy of the equipment, and when and by whom the test was made, shall be admissible as evidence of the facts stated therein. The calibration or testing of such equipment shall be valid for twelve (12) months.

This ordinance shall take effect upon adoption.

Upon a call for an aye and nay vote on the foregoing ordinance at a regular meeting of the Council of the Town of Christiansburg, Virginia held _____, the members of the Council of the Town of Christiansburg, Virginia, present throughout all deliberations on the foregoing and voting or abstaining, stood as indicated opposite their names as follows:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Mayor D. Michael Barber*				

Samuel M. Bishop

Harry Collins

Steve Huppert

Merissa Sachs

Henry D. Showalter

Bradford J. Stipes

*Votes only in the event of a tie vote by Council.

SEAL:

Michele M. Stipes, Town Clerk

D. Michael Barber, Mayor

**AN ORDINANCE AMENDING CHAPTER 42, “ZONING,” OF THE
CHRISTIANSBURG TOWN CODE IN REGARDS TO PROVISIONS FOR
LOUDSPEAKER, SOUND AMPLIFICATION, OUTDOOR SOUND SYSTEM TO
BE USED IN EXCESS OF THE TOWN’S NOISE ORDINANCE, CHAPTER 24
“NUISANCES,” ARTICLE II – REGULATION OF NOISE**

WHEREAS, notice of a public hearing before the Christiansburg Planning Commission concerning this ordinance was published two consecutive weeks (Month day, 2018 and Month day, 2018) in The News Messenger, a newspaper published in and having general circulation in the Town of Christiansburg; and,

WHEREAS, a public hearing of the Planning Commission was held Month day, 2018 and resulted in a recommendation by the Planning Commission that the following proposed zoning ordinance amendment be adopted; and,

WHEREAS, notice of the public hearing before the Town Council concerning this ordinance was published two consecutive weeks (Month day, 2018 and Month day, 2018) in The News Messenger, a newspaper published in and having general circulation in the Town of Christiansburg; and,

WHEREAS, the Town Council’s public hearing was held Month day, 2018; and,

WHEREAS, Town Council has considered the following amendment to the Town’s Zoning Ordinance and found that the public necessity, convenience, and good zoning practices deem it proper to do so;

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Christiansburg, Virginia, that Chapter 42 “Zoning” of the *Christiansburg Town Code* be amended by the addition of Sections 42-33(28), 42-218(22), 42-249(31), 42-281(34), 42-305(43), 42-336(60), 42-370(29), and Sec. 42-397(20) as follows:

Chapter 42 – ZONING

* * *

ARTICLE II. – AGRICULTURAL DISTRICT A

Sec. 42-33. – Permitted uses.

(28) Loudspeaker / sound amplification / outdoor sound system to be used in excess of the Town’s noise ordinance, with a conditional use permit.

**ARTICLE VIII. – MIXED USE: RESIDENTIAL – LIMITED BUSINESS
DISTRICT MU-1**

Sec. 42-218. – Permitted uses.

(22) Loudspeaker / sound amplification / outdoor sound system to be used in excess of the Town’s noise ordinance, with a conditional use permit.

**ARTICLE IX. – MIXED USE: RESIDENTIAL – LIMITED BUSINESS –
LIMITED INDUSTRIAL DISTRICT MU-2**

Sec. 42-249. – Permitted uses.

- (31) Loudspeaker / sound amplification / outdoor sound system to be used in excess of the Town's noise ordinance, with a conditional use permit.

ARTICLE X. –LIMITED BUSINESS DISTRICT B-1

Sec. 42-281. – Permitted uses.

- (34) Loudspeaker / sound amplification / outdoor sound system to be used in excess of the Town's noise ordinance, with a conditional use permit.

ARTICLE XI. – CENTRAL BUSINESS DISTRICT B-2

Sec. 42-305. – Permitted uses.

- (43) Loudspeaker / sound amplification / outdoor sound system to be used in excess of the Town's noise ordinance, with a conditional use permit.

ARTICLE XII. – GENERAL BUSINESS DISTRICT B-3

Sec. 42-336. – Permitted uses.

- (60) Loudspeaker / sound amplification / outdoor sound system to be used in excess of the Town's noise ordinance, with a conditional use permit.

ARTICLE XIII. –LIMITED INDUSTRIAL DISTRICT I-1

Sec. 42-370. – Permitted uses.

- (29) Loudspeaker / sound amplification / outdoor sound system to be used in excess of the Town's noise ordinance, with a conditional use permit.

ARTICLE XIV. – GENERAL INDUSTRIAL DISTRICT I-2

Sec. 42-397. – Permitted uses.

- (20) Loudspeaker / sound amplification / outdoor sound system to be used in excess of the Town's noise ordinance, with a conditional use permit.

This ordinance shall become effective upon adoption. If any part of this ordinance is deemed unlawful by a court of competent jurisdiction all remaining parts shall be deemed valid. Ordinances or parts of any ordinances of the Town whose provisions are in conflict herewith are hereby repealed.

Upon a call for an aye and nay vote on the foregoing ordinance at a regular meeting of the Council of the Town of Christiansburg, Virginia held **Month DD**, 2018, the members of the Council of the Town of Christiansburg, Virginia present throughout all deliberations on the foregoing and voting or abstaining, stood as indicated opposite their names as follows:

<u>MEMBER</u>	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Samuel M. Bishop				
Harry Collins				
Steve Huppert				
Merissa Sachs				
Henry Showalter				
Bradford J. Stipes				
Mayor D. Michael Barber*				

*Votes only in the event of a tie.

D. Michael Barber, Mayor

Michele M. Stipes, Town Clerk

Information on Christiansburg's Noise Ordinance



NEW ORDINANCE

The Town of Christiansburg is currently seeking input from businesses and residents regarding proposed changes to our noise ordinance. The proposed changes clarify and simplify the existing ordinance in several ways, including changing the distance of allowed noise travel during daylight hours from 50 feet to 100 feet; replacing criminal penalties with civil penalties; consolidating prohibited noises; amending exemptions; and adding a Conditional Use Permit (CUP) process for entities that believe they will violate the noise ordinance on a continual basis.

What does that last change mean? If a business knows it will repeatedly violate the noise ordinance, it can apply for a permit that will allow it to operate under Council-approved parameters. Town Council will look at conditions to help alleviate the impact the business' noise will have on its neighbors – such as specific time restrictions or physical measures to contain noise – while allowing the business to continue operating as normally as possible.

Why is the Town proposing these changes?

We recognized an opportunity to improve our noise ordinance by making it clearer and simpler. We also have received noise complaints from residents about an existing business in town, as well as complaints from the business about the ordinance.

In March 2016, the Town received a complaint from a resident about excessive noise from the Starlite Drive-In Theater. Town staff responded and discovered the Starlite had installed a new sound system. The business had removed the individually-mounted car speakers and replaced them with an amplified, outside speaker system. The new amplified speaker system led to additional neighborhood complaints during the remainder of the Starlite's season, as the Town attempted to work with the business to find a suitable volume level.

During this time, the Town's attorneys determined the Starlite was not exempt from the noise ordinance because the new speaker system was not necessary to the business, as the Starlite had operated for decades without it, and customers could listen to the movie on the 90.3 FM frequency through their car stereos or via other potential means, such as transistor radios provided to patrons with a deposit.

For more than a year, the Town received resident complaints without citing the Starlight for a noise violation. Instead, Christiansburg Police continued to work with the business to find a solution that worked for both its customers and its surrounding neighbors. However, in May 2017, Christiansburg Police responded to the home of a complainant, where officers could plainly and audibly hear a movie being played more than 100 feet away. A summons was issued to the Starlite for violating the ordinance. The resulting litigation prompted the Town to re-evaluate its existing ordinance to see how it could better serve both businesses and residents.

WHAT'S NEXT?

The Town is gathering input regarding its proposed changes. We held our first public hearing on March 1, and our second is scheduled for March 8. Staff will take input from the public, make any needed changes and then present the ordinance to the Planning Commission, which will also hold a public hearing. The final step will be a Town Council public hearing before Council takes action on April 24.

The Town wishes to reiterate that we are not singling out any particular businesses with these proposed changes, but instead attempting to make it easier for businesses and the Town to reach agreed-upon parameters when it comes to noise. We have a duty as a Town to protect our residents' property rights and quality of life, but at the same time, we want to encourage entertainment options and help our businesses succeed. It's a balancing act, and we're doing our best to find a workable solution.

Information on Christiansburg's Noise Ordinance



FAQ

Shouldn't residents who purchased a home near the Starlite realize they'd be exposed to noise?

For decades, the Town never received a noise complaint about the Starlite from its neighbors. The Town was not made aware of an issue until Spring 2016, after the Starlite decided to change its sound delivery system. Prior to that change, it appears nearby residents never had an issue with noise from the theater.

The Starlite says they've been removed from a new map of the Town. Is the Town attempting to shut the business down?

No. The Starlite is one of the region's favorite attractions and is a beloved Christiansburg tradition. We certainly don't want to see that change. However, we cannot ignore complaints from residents who feel their property rights are being violated. The Town is attempting to find a solution for both parties.

As far as the "new map" is concerned, we believe the business is referencing a future land use map that has not been amended since the 2013 Comprehensive Plan was adopted in

November 2013. The map designates the area around the Starlite as residential for future uses due to the surrounding neighborhoods and the property's distance from Roanoke Street. The Starlite property has been designated residential as far back as 1993, so this is not a "new" map. It's just a guide for potential future uses, nothing more.

Why doesn't the Town measure volume in decibels?

Many jurisdictions are moving away from measuring noise in decibels because it's a difficult process requiring specialized equipment and training. The "plainly audible" definition is commonly used and has been upheld in court.

I've heard cows are exempt from the noise ordinance – why are they exempt, but not businesses? What about interstate noise?

Cows – and any farm animal for that matter – are exempt under the Virginia Right to Farm Act, which essentially states that agriculture operations in agriculture zoning districts cannot be regulated, as long as the operation is using best management practices. The Town also has no right to regulate properly licensed and tagged motor vehicles from operating on highways.

RESOURCES

We welcome feedback about the proposed changes to the noise ordinance. Please let us know your thoughts by attending a public meeting, or by contacting Planning Director Andrew Warren.

Public Meeting
6 p.m., March 8
2nd floor, Town Hall
100 E. Main Street

Public Hearing
7 p.m., March 19
2nd floor, Town Hall
100 E. Main Street

Public Hearing
7 p.m., April 10
2nd floor, Town Hall
100 E. Main Street

Andrew Warren
Planning Director
awarren@christiansburg.org
(540) 382-6128 ext. 1130

Please visit www.christiansburg.org/noiseordinance to view the proposed ordinance.



Starlite Drive In Official Proposal: Noise Ordinance for Businesses

We are concerned with the freedom of enjoyment and liberty of all - including residential property owners and business owners. Therefore, we are requesting that the Planning Commission and Town of Christiansburg review the following compromise as proposed for the benefit of all business owners and residents. Being an outdoor movie theater by it's very nature has created the dilemma for the right to conduct our business and serving patrons, while also trying to be good neighbors for many more years to come.

We agree to following **compromises** if this can be obtained within the new ordinance. This ordinance should reflect the will of the overwhelming majority of the people, while protecting the minority. We suggest that the noise ordinance for **Friday and Saturday nights be moved to 12am**. However, Starlite commits to a **radio only movie after the first showing** on those nights. On Thursday and Sunday, Starlite will reduce to one movie showing (reducing Sunday showings) without restriction to sound. Once the first movie is over, no more sound. This is an necessary request due to Daylight Savings Time altering the time of dusk each week.

We also hereby request that Starlite property to be returned to Business Zoning on current and all future maps unless requested by Starlite property owners.

We trust that this good faith measure will be beneficial to most all parties. We wish for the Starlite Drive In to continue it's tradition and be a good neighbor even to the few who were disturbed.

Thank you,

Peggy Beasley
Owner and Operator

Andrew Warren

From: Thomas Irish <teirish@gmail.com>
Sent: Wednesday, March 14, 2018 2:44 PM
To: Mike Barber; Bradford Stipes; Harry Collins; Henry Showalter; Merissa Sachs; Samuel M. Bishop; Steve Huppert
Cc: Randy Wingfield; Andrew Warren
Subject: Noise Ordinance

To: Mayor Barber and Members of the Christiansburg Town Council

We note that Christiansburg is considering changes to its noise ordinance. We encourage the Town Council to change the ordinance in a way that strengthens Christiansburg as a pleasant and livable community.

We were in attendance at a Town Council meeting last spring on a zoning matter when a father who lives near the Starlite Drive-In Theater implored the Council to take action to eliminate the annoyance of the Starlite's new external sound system. He described how he and his son could hear the sound inside their home, and he was particularly concerned about profanity in movies' soundtracks, which he and his son could clearly hear. We were touched by his remarks, and we couldn't imagine having to live under such conditions. No one in Christiansburg should.

We do not know this person, or anyone who lives near the Starlite. But, and we don't know for sure, we imagine nearby residents had little issue with the Starlite when movie soundtracks were 'piped' into cars via individual in-car speakers. To us, the Starlite dramatically changed the character of its business when they adopted an external speaker system, and the significantly increased noise from such a system should not now be considered incidental or routine to the business. Nearby residents should not be asked to adapt to this significant change to the business, nor should they be expected to accept a 'compromise' resolution.

So, as you consider changes to the ordinance, please keep in mind the desire, and right, of all residents to live peaceful lives in our Town.

Thank you,

Thomas and Karen Irish
90 Revolution Circle
Christiansburg, VA 24073

443-465-5673

Andrew Warren

From: Wanda Hamlin <mntstar88@gmail.com>
Sent: Saturday, March 10, 2018 7:52 AM
To: Andrew Warren
Subject: Starlite Drive-in and preserving what makes Christiansburg unique

Follow Up Flag: Follow up
Flag Status: Flagged

Town of Christiansburg...don't miss out on seeing the 'big picture'. You have an iconic feature unique to the town. Perhaps brainstorming on creative ways to promote both the Starlite and the town would better serve the community than debating about noise ordinances ever would. There is a drive-in movie theater motel in CO that makes it's way into travel magazines because of it's uniqueness. <https://www.roadsideamerica.com/story/20900> . I'm not saying that particular idea would work for the Starlite...but it is a feature of the town worth promoting.

Andrew Warren

From: Marshall Kurtz <mlkurtz@vt.edu>
Sent: Thursday, March 8, 2018 6:43 PM
To: Andrew Warren
Subject: Proposed Noise Ordinance Analysis

Dear Mr. Andrew Warren,

I have read through the proposed ordinance and your official reasoning behind it. I am unable to attend the public meeting on March 8 at 6 pm but I would absolutely be there voicing my opinion in person if I could. I believe the proposed noise ordinance is poorly written, difficult to enforce due to new definitions and vague requirements, and clearly focused on limiting the ability for businesses such as the Starlite Theater to conduct their business. I will proceed to demonstrate general fallacies and weak portions of the proposed ordinance in the following sections of this email, and then apply these observations to the Starlite specifically.

1) Definition: *Plainly audible* means any sound that can be heard or felt by a person using his unaided faculties.

"Heard or felt" is a weak definition allowing the town to enforce this ordinance on any person in order to serve the town's interests. I propose that a more specific and measurable qualifier for noise other than "heard or felt" should be used in the ordinance. Many sounds can be heard or felt from 100 feet away (about the distance between two houses on opposite sides of a residential street). For example, a lawn mower can be heard from 100 feet away, yet the operation of such a machine would be prohibited by this new ordinance, even during the daytime.

2) Definition (**REMOVED**): *Property boundary* means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned, leased, or otherwise legally controlled by one person from that owned, leased, or otherwise legally controlled by another person, including intra-building real property divisions.

Why remove this? Any "person" as defined in the ordinance should have the right to create sound on their entire property if it is for a legitimate purpose. This sound should be allowed to be "heard or felt," as you say, anywhere within the property boundaries.

3) Regulation Sec. 24-33 (1): It shall be unlawful for any person to use, operate, or play a loudspeaker, sound-amplifying equipment or other machine, instrument, or device capable of producing or reproducing sound in such a manner or with such volume or duration that it is plainly audible: a. Inside the confines of an enclosed dwelling unit of another person; or b. At a distance of 100 feet or more from the device, except for devices permitted to be used pursuant to a noise permit issued by the Town.

What is the basis for 100 feet? Many sounds can be plainly audible at 100 feet, which is again, about the distance across a residential street. This distance is far too small to be worthy of an ordinance controlling sound. Furthermore, an "enclosed dwelling unit" requires windows to be shut, doors to be closed. I believe this to be easily overlooked by a) potential complainants and b) enforcers of the ordinance, namely police officers.

4) Regulation Sec. 24-33 (5 or 6; unclear): It shall be unlawful for any person to fail to deactivate an alarm system plainly audible at a distance of 50 feet or more from such alarm within 30 minutes of hearing the alarm or receiving notice of the alarm's activation.

It does not make sense to permit a time period of grace for one loud noise but not another. In the case of an alarm system, the alarm should be allowed to ring for as long as the threat is still perceived, for the alarm is serving a legitimate purpose. This suggests that any noise that serves a legitimate purpose should also not be subject to the ordinance.

5) Exemption Sec. 24-34 (1) **(REMOVED)**: Sounds generated in business, industrial and mixed-use zoning districts that are necessary and incidental to the uses permitted therein.

Removing this exemption is unethical. Businesses that rely on a process that generates sound should absolutely be exempt from any noise ordinance, especially if the business has been around longer than the other establishments that arrived nearby after it.

6) Undue Hardship Waiver Sec. 24-36 (a) **(REMOVED)**: Any person responsible for a noise source may apply to the town manager or town designee for a waiver, or partial waiver, from the provisions of this article. The town manager or town designee may grant such waiver, or partial waiver, upon a finding that any of the following circumstances exists: (1) The noise does not endanger the public health, safety or welfare; or (2) Compliance with the provisions of this article from which a waiver is sought would produce serious economic hardship without producing substantial benefit to the public.

Removing this waiver clause is unethical. Other sections of the proposed ordinance refer to the possibility to obtain a waiver from the ordinance, yet the section detailing circumstances that grant any person these waivers has been removed. I believe this is an effort to trick the populace into believing that anyone can receive a waiver, and therefore the town is being fair, when in reality the town would have no means of determining who can obtain a waiver.

I will not repeat the arguments for not penalizing the Starlite that I am sure you have already heard from others, namely heritage and town pride. I instead want to address how this proposed ordinance is seemingly written to affect the Starlite specifically.

The Starlite is a business. The property that is used for watching movies is roughly 350 feet from end to end.

By using a definition of noise such as "heard or felt," the Starlite is one of very few, if any, establishments actually impacted by this new ordinance. The theatrical experience that keeps the Starlite alive and well while contributing to Christiansburg's economy is reliant on sound being heard and felt. Setting the distance in the ordinance at a seemingly arbitrary 100 feet suspiciously places the nearest homes, roughly 115 feet away, just outside the 100 foot radius. Since the Starlite's property is roughly 350 feet from end to end, the sound must be able to be heard and felt at that distance in order for the business to be operable. This "arbitrary" distance, coupled with the suspicious removals of the business exemption and the waiver section, show that there are alternative motives to passing this ordinance and giving reason to shut down the Starlite. The noise generated by the Starlite serves a legitimate purpose much like an alarm system. Therefore, this sound should not be subject to the ordinance.

The bottom line is that there are some sounds that citizens simply have to live with hearing. Again, take lawn mowers across the street, for example. Citizens understand the noise created by a lawn mower is just the nature of the mower, and understand that they must simply live with the noise or turn on the radio in their home to

cover up the noise if they so choose. This ordinance would target the Starlite in a manner of which the motive for why is unclear.

I urge you to consider the ethics of this proposed ordinance. Rewrite it in a fair manner while working with the owner of the Starlite or perhaps give the Starlite a waiver to not be impacted by the ordinance (which would not be permissible with the current proposition since that section has been removed).

Thank you for taking the time to read my analysis of the proposed ordinance. If there are any questions you want to ask, please reach out to me with this email. I look forward to hearing your thoughts.

Sincerely,

Marshall Kurtz

Andrew Warren

From: Kaye Meadows <kayem924@gmail.com>
Sent: Thursday, March 8, 2018 6:29 PM
To: Andrew Warren
Subject: Noise ordinance Christiansburg

I have been unable to attend recent meetings in regards to the noise ordinance issues. I am a medical professional and work late. My husband and I have been going to Starlite for 28 years. We have sat in long lines waiting for the next show and we have never had an issue with the noise. We live in Blacksburg about 10 to 12 minutes from VT. I can tell you that tail gaiting is not a quite event. It is also a normalcy for us to be awakened late at night by fireworks or the cannon being fired at VT in celebration of something. We can hear their band and all that noise. No one is trying to stop any of this disturbance. When we come to the drive in, we support local businesses in your town, the drive in, Dudes, Food Lion, Wades, Tractor Supply and the Marathon gas station. When we have a outing over that way we do more than just go to the movies. We help support your town. We feel this is nothing more than a ploy for someone to close down family oriented places of buiseness and buy up property. Would you rather have no place for the children of this area to have family time? Our nation can do with a little less land grabbing and a little more investment in our children. They are our future!

Andrew Warren

From: Heather Jennelle <heatjen08@yahoo.com>
Sent: Thursday, March 8, 2018 2:57 PM
To: Andrew Warren
Subject: Noise ordinance change

Mr. Warren,

I am a resident of Christiansburg and I am not able to make the meeting this evening. I live near starlight drive in and I do not think that these changes are necessary. The changes that are being proposed will shut this business down and that will break my heart. Montgomery county and the town of Christiansburg rip us off enough on taxes that I feel all of our voices should be heard. We cannot ruin this business because a few people want to complain. Thank you for your time.

Heather Jennelle

Tap to get Yahoo Mail

Andrew Warren

From: Bryan Finch <bryansfinch@gmail.com>
Sent: Thursday, March 8, 2018 9:33 AM
To: Andrew Warren
Subject: Save the Starlite

Mr. Warren,

I am a resident of Roanoke, but my family and I love to drive to Christiansburg to come to the Starlite Drive-In. You have one of the world's last living drive-in theaters, and if you force it to close, we won't have any reason to come and spend any time or money in your town. I am sure you can work something out, but please do not let this treasure we all share go away. I do not support any changes in the sound ordinance that would affect the theater, and you should not either.

All the best,
Bryan Finch
bryansfinch@gmail.com

Andrew Warren

From: Tracie Cook <tcook@mcps.org>
Sent: Wednesday, March 7, 2018 10:08 AM
To: Andrew Warren
Subject: noise ordinance proposal



Hello-

I am writing as a lifelong resident of Christiansburg in support of Starlite Drive In. I can't believe the Town would promote legislation that would damper this business. Personally, I feel that the Drive In as been there so long, that people should not move near something like this business if "noise" bothers them. Just like myself, living in Cambria by the train tracks. Or for instance, near the fire or rescue departments. I have two very close friends who live on Chestnut Drive in the cul-de-sac and this "noise" does not bother them in the slightest. This is very disappointing as a citizen that the Town is helping push this business extinct. Please consider how citizens feel overall, perhaps a vote! Thank you for your time.

-Sincerely -

Tracie Cook RN, BSN

EMHS School Nurse 540-268-3010



Sent with Mailtrack

Andrew Warren

From: Jenny Nehrt <nehrtjl@vt.edu>
Sent: Wednesday, March 7, 2018 10:00 AM
To: Andrew Warren
Subject: Support for the Starlite Theater

Dear Mr. Warren,

I'm writing today to express my support for the Starlite Theater. The new sound system is important to their business. The previous sound system was too quiet and didn't work.

This seems like part of the disappointing trend of the town not supporting interesting businesses in Christiansburg. Some of us enjoy the small town charm of local businesses and wish the town would spend more time investing in these businesses rather than burdening them with inconsequential (to the residents) noise complaints.

Sincerely,
Jennifer Nehrt