

March 24, 2014

Dear County Board Members:

We want to thank you for your attention to our oral comments at last Tuesday's public meeting and for your decision to postpone the formal advertisement of the Noise Control Ordinance (NCO) revisions until further changes are considered. We are especially grateful for your instructions to staff to reconsider our proposed modifications and to work with us toward that end.

During the discussion among yourselves and with Mr. MacIsaac and Mr. Greene after the public speakers finished, we heard some assumptions made about our concerns that seemed not fully to capture our intent. We are writing this letter to clarify those matters.

We address three matters: (1) tolerance for urban ambient noise, (2) use of a decibel metric for human noise, and (3) extending the protections of par. 15.6(g) to the daytime.

(1) During the discussion, the statement was made that a higher level of urban ambient noise is to be expected in mixed-use neighborhoods than in purely residential neighborhoods. In the context that the statement was made, the speaker seemed to imply that we seek the same noise level or demand to be accorded the same expectations as would be appropriate in "R" districts. As the speaker noted, this objective is impractical.

We want to be clear that, as homeowners in a mixed-use neighborhood, we fully understand that normal ambient noise will be at a higher level than in purely residential neighborhoods. We accept that reality, and we most definitely are not seeking a noise ordinance that would assume uniform expectations for ambient noise across all neighborhoods.

What we are concerned about is human noise - most often, but not exclusively, crowd noise. Our interest in the NCO arises from our proximate location to the A-Town Bar & Grill, which opened in August of 2012 and whose outdoor operations have been a source of persistent disturbing crowd noise in our neighborhood. Our experience has been that the human noise generated by this source goes well beyond reasonable expectations of even a mixed-use area. Indeed, many of us have been in our homes for 10 - 20 years, never had reason to complain about ambient noise, but now find ourselves confronting a whole new form of disturbance that we never expected. What we seek is a noise ordinance that includes reasonable protections against this kind of disturbance.

(2) At another point in the post-speaker discussion, a statement was made to the effect that the decibel level standards set out in the draft NCO should adequately protect against crowd noise in mixed-use neighborhoods. Given our experience, we cannot accept this position. It misperceives the nature of the disturbance.

To explain, the disturbing noise that we have confronted over the past 19 months is loud noise, but not anything close to eardrum piercing noise. It likely would not exceed the decibel standards in the NCO. It is the incessant din generated by a large outdoor sports-viewing crowd whose energy spikes into sudden roars of cheering and shouting each time a significant event (homerun, basket, touchdown, *etc.*) occurs during TV broadcasts or each time a significant event occurs during one of the patio-centered live games.

Although these bursts of cheers and shouts are loud enough to penetrate the closed double-pane glass windows in our homes, it is not the volume *per se* that is disturbing, but rather the suddenness and randomness of the spikes in cheers and shouts. These occur for hours on end, day after day. The effect is nerve-wracking. One might liken it to the beating and thumping of the base from someone's stereo coming through a common wall. Although audible, a decibel reading will not register excessive volume. Nonetheless, the disturbance is real. We believe that the application of the staff's "plainly audible" standard is the appropriate standard under these circumstances.

- (3) A significant portion of the post-speaker discussion pertained to our recommendation that par. 15.6(g) not be limited to "Nighttime" as defined in the draft NCO. In listening to your discussion, it was apparent that we were too vague in describing what we had in mind in making this recommendation.

One Board member offered the example of a temporary portable generator in the street on a weekday, and asked how practical it would be for the NCO to prohibit such events. The same could be said of a jackhammer or other construction activity. We want to be clear that we are not contemplating an NCO that would prohibit any of these or similar activities. In fact, in our considerations, we did not even have weekdays in mind - let alone, normal weekday activity in an area as ours that includes businesses, offices, and a hotel with attendant tour groups, tour buses, and the like.

Rather, the impetus for our concern about the Nighttime limitation in par. 15.6(g) arises from the chronic weekend afternoon crowd noise coming from A-Town's patio operations and that penetrates our homes. In this regard, Ms. Hynes said something that captures the essence of what we experience. She differentiated between irregular, temporary noise and persistent, chronic noise. We think that application of this concept would be a principled and practical way to address disturbing daytime human noise without overreach.

We fully accept (and have for many years) the occasional festival, block party, or other special event. It is just part of urban living, and we understand that a little reciprocity toward commercial and other interests in the neighborhood is good citizenship. Moreover, the irregularity and infrequency of these kinds of events -- and just knowing that an event has an end to it - argues for little concern.

By contrast, what we face is chronic, persistent weekend afternoon crowd noise disturbing to the peace and tranquility of our homes. With very few exceptions, it is every single weekend, and has persisted ever since A-Town opened. It is year-round, as A-Town has portable heaters on its patio during the cold weather months. Save for some recent extremely cold weekends that trump even the portable heaters, there has been no relief from this weekly disturbance for the past 19 months.

It is this kind of chronic daytime noise disturbance that we had in mind in recommending deletion of the Nighttime limitation. In light of your discussion on last Tuesday, however, we would amend our recommendation so as to have par. 15.6(g) simply extend protections to Sundays, leaving Saturdays and weekdays outside of the limitation as those times are now left out. Although our preference would be to include Saturdays, we offer this suggestion as a reasonable compromise.

As you can appreciate, Sundays are especially important, as Sunday is the traditional time for families and individuals to enjoy respite from the other claims of day-to-day living. Indeed, we think that, for this reason, this adjustment to par. 15.6(g) will be important to all Arlington districts.

Finally, given our experience with A-Town, we believe that it is also important to extend par. 15.6(g) to be inclusive of Sundays, simply to have a stronger tool than use permit conditions. By way of example, last December you approved a noise control condition relevant to Sunday afternoons as part of A-Town's live entertainment permit. Our observations, however, are that there has been significant, chronic compliance failure with that condition, but we are left largely helpless as the police have little enforcement authority in such matters. A strong NCO would alleviate this problem.

Once again we thank you for your attention and consideration of our views. We look forward to continuing to work with County Staff on this important matter.

On behalf of the Altavista/Berkeley Ad Hoc Committee of Concerned Homeowners, sincerely,

/Lee Austin/
Lee Austin

/Rosemary Ciotti/
Rosemary Ciotti

/Theodore Gebhard/
Theodore Gebhard