

**TOWN OF LEESBURG
NOTICE OF PUBLIC HEARING
TO CONSIDER AN AMENDMENT TO CHAPTER 24,
ARTICLE V, DIVISION 1, SECTION 24-184 OF THE TOWN CODE
OF LEESBURG TO AUTHORIZE THE SERVICE OF ALCOHOLIC
BEVERAGES BY LICENSED ESTABLISHMENTS
IN PUBLIC SIDEWALK RIGHT OF WAY IN DESIGNATED
AREA ADJACENT TO HARRISON STREET BETWEEN
ROYAL STREET AND SOUTH STREET**

The **LEESBURG TOWN COUNCIL** will hold a public hearing on **TUESDAY, JULY 9, 2013, at 7:30 p.m.**, in the Council Chambers at Town Hall, 25 West Market Street, Leesburg, Virginia, 20176, to amend Chapter 24, Article V, Division 1, Section 24-184 of the Town Code of Leesburg to permit the service of alcoholic beverages by licensed establishments in a designated area of public sidewalk right of way adjacent to Harrison Street between Royal Street and South Street. The following amendment will be proposed:

Section 24-184. Public profanity and drunkenness.

(e) This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in a designated area of Town property known as the Leesburg Town Green or a designated area of public sidewalk right of way adjacent to Harrison Street between Royal Street and South Street if:

- 1) The designated area is approved by the state alcoholic beverages control board and adjacent to a licensed establishment, provided such establishment or the person who operates the same is licensed to sell alcoholic beverages at retail for on-premises consumption and the alcoholic beverages drunk or offered were purchased therein;
- 2) A permit has been issued by the Town Manager or designee to allow the licensed establishment to encroach upon Town property;
- 3) The designated area shall be adjacent to the property of an existing and lawfully operating licensed establishment, and outdoor dining shall be under the responsible direction and control of such establishment;
- 4) The licensed establishment or the person who operates the same enters into a Memorandum of Agreement with the Town which sets forth the requirements for the drinking and offering of alcoholic beverages in the designated area ~~known as the Leesburg Town Green~~. Said Memorandum of Agreement must be approved by the Town Council.

A copy of the proposed ordinance is available from the Town Clerk, located in Town Hall. Additional information regarding these proposed amendments is available in the Executive Department, located on the first floor of the Leesburg Town Hall, 25 West Market Street, Leesburg, Virginia, during normal business hours (Monday-Friday, 8:30 a.m. to 5:00 p.m.), or by calling Lee Ann Green, Clerk, at 703-731-2733.

At this hearing, all persons desiring to express their views concerning these matters will be heard. Persons requiring special accommodations should contact the Clerk of Council at 703-771-2733, three days in advance of the meeting. For TTY/TDD service, use the Virginia Relay Center by dialing 711.



Date of Council Meeting: July 9, 2013

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: Whether Section 24-184 of the Town Code should be amended to allow the consumption and service of alcohol by a licensed establishment within the public sidewalk right-of-way in a designated area on Harrison Street, S.E. between Royal Street, S.E. and South Street, S.E.

Staff Contact: Jeanette Irby, Town Attorney
Barbara Notar, Deputy Town Attorney

Recommendation: That the Town Council should amend the Town Code to allow the consumption and service of alcohol by a licensed establishment within the public sidewalk right-of-way in a designated area on Harrison Street, S.E. between Royal Street, S.E. and South Street, S.E.

Issue: Should Section 24-184 of the Town Code be amended to allow the service and consumption of alcohol by a licensed establishment within the public sidewalk right of way in a designated area on Harrison Street, S.E. between Royal Street, S.E. and South Street, S.E.?

Fiscal Impact: To be determined: A fee must be paid to the Town for the use of the public property.

Background: In response to a complaint received by the Department of Planning and Zoning that structures located on the premises of 202B Harrison Street, S.E. and 204 South Street, S.E. (MacDowell Brew Kitchen) were installed without Certificate(s) of Appropriateness (“COA”) from the Board of Architectural Review (“BAR”), a Notice of Violation (“NOV”) was sent to the property owner. The NOV stated that not only were structures installed on the “beach” area of MacDowell Brew Kitchen (Brew Kitchen) without BAR approval, but a portion of the beach was located on an area dedicated to the Town as public street right-of-way (“ROW”). Additionally, the NOV notified the property owner that the beach area was located on a parcel of land (204 South St., S.E.) zoned residential.

The Town Attorney’s office contacted the principal owner of the Brew Kitchen to outline the necessary steps to address the violations. In response, the Brew Kitchen:

- Roped off the area of ROW that was within the beach and agreed to refrain from serving alcohol within the ROW;
- Added the Town as an additional insured to its General Liability insurance (a request to add the Town as an additional insured to its liquor liability insurance is pending);
- Contacted the Department of Planning and Zoning to reinstitute a Rezoning Application for 204 South Street to rezone the area from a residential to commercial use;
- Contacted the Preservation Planner and applied for COA(s) for the structures contained within the area; and
- Began discussions with the Town staff for the owner of the Brew Kitchen to purchase the surplus ROW from the Town.

In response to these steps, the Department of Planning and Zoning issued a Projection and Streetscape Amenities Permit authorizing non-fixed assets to remain in the Town's ROW. This permit is for a limited period of time (60 days) to allow time for the owner to make application requesting the town council to vacate and convey the right of way pursuant to Virginia State Code section 15.2-2006 (Alteration and vacation of public rights-of-way; appeal from decision.)

The Town Code Section 24-184 to be amended prohibits the consumption and service of alcohol on Town property unless the area is listed as an exception. In 2010, the Town Council amended this Section 24-184 of the Town Code to allow for the consumption and service of alcohol on public property adjacent to the Town Green. The Town Code amendment requires a Memorandum of Agreement ("MOA") to be executed by the Town Manager and the licensed establishment which outlines all requirements that must be met before the establishment may serve alcohol on Town property. A valid ABC License, Liability Insurance that insures the Town and a fee are some of the important aspects of the MOA. Town staff will continue discussions with the owner of the Brew Kitchen to ensure execution and compliance with an MOA and an application to purchase the surplus right-of-way.

Attachments: Proposed Ordinance
Map of area

Map Search Tools Results

Aerial Archive

Latitude/Longitude

Measure



Area:
1,680 square feet or 0.04 acres

Perimeter:
208 feet or 0.04 miles

Metadata

Report Feature Area



PRESENTED: July 9, 2013

ORDINANCE NO. _____

ADOPTED: _____

AN ORDINANCE: TO AMEND AND REORDAIN CHAPTER 24 (OFFENSES AND MISCELLANEOUS PROVISIONS), ARTICLE V (OFFENSES AGAINST PUBLIC PEACE AND ORDER), DIVISION 1 (GENERALLY), SECTION 24-184 (PUBLIC PROFANITY AND DRUNKENNES) OF THE LEESBURG TOWN CODE TO ALLOW ALCOHOL TO BE SERVED AND CONSUMED IN A DESIGNATED AREA OF PUBLIC SIDEWALK RIGHT OF WAY ON HARRISON STREET BETWEEN ROYAL STREET AND SOUTH STREET

The Town Council of Leesburg, Virginia, ordains:

SECTION I. That the following subsection of Chapter 24 (Offenses and Miscellaneous Provisions), Article V (Offenses Against Public Peace and Order), Division 1 (Generally), Section 24-184 (Public Profanity and Drunkenness) of the Town Code of Leesburg, Virginia, 2009, as amended, be and the same is hereby amended to read as follows:

Section 24-184. Public profanity and ~~drunkenness~~ intoxication.

(e) This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in a designated area of Town property known as the Leesburg Town Green or a designated area of public sidewalk right of way adjacent to Harrison Street between Royal Street and South Street if:

- 1) The designated area is approved by the state alcoholic beverages control board and adjacent to a licensed establishment, provided such establishment or the person who operates the same is licensed to sell alcoholic beverages at retail for on-premises consumption and the alcoholic beverages drunk or offered were purchased therein;
- 2) A permit has been issued by the Town Manager or designee to allow the licensed establishment to encroach upon Town property;
- 3) The designated area shall be adjacent to the property of an existing and lawfully operating licensed establishment, and outdoor dining shall be under the responsible direction and control of such establishment;
- 4) The licensed establishment or the person who operates the same enters into a Memorandum of Agreement with the Town which sets forth the requirements for the drinking and offering of

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alcoholic beverages in the designated area ~~known as the Leesburg Town Green~~. Said Memorandum of Agreement must be approved by the Town Council.

SECTION II. All prior ordinances in conflict herewith are hereby repealed.

SECTION III. Severability. If a court of competent jurisdiction declares any provision of this ordinance invalid, the decision shall not affect the validity of the ordinance as a whole or any remaining provisions of the Leesburg Town Code.

SECTION IV. This ordinance shall be effective upon its adoption.

PASSED this _____ day of _____, 2013.

Kristen C. Umstattd, Mayor
Town of Leesburg

ATTEST:

Clerk of Council