

1. Discussion Objective:

Work Session Date: January 6, 2014

Discuss options for modifying the Town's noise ordinance.

2. Submitter of Information:

- Council
- Town Staff
- Town Attorney

3. Estimated Time for this item:

60 minutes

5. Background: The Town's current noise ordinance is not being enforced by the Sheriff due to certain provisions that are contradictory and others that are subject to challenged based on the recent Florida Supreme Court decision in State v. Catalano. The Sheriff is still able to cite for violations that are determined to violate the state "breach of peace" statute. The Lee County and City of Bonita Springs Noise Ordinances suffer from the same infirmities as the Town's ordinance, so it may be beneficial to consider coordinating with those jurisdictions to develop one uniform enforceable ordinance that the Lee County Sheriff will be familiar with and will be able to enforce uniformly in all three jurisdictions.

Ordinances from Naples, Tampa, Delray Beach and Winter Garden are attached. All of these jurisdictions have modified their ordinances in light of the Catalano decision.

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

Sec. 22-37. Noise.**(a) Definitions.**

A-weighted level (dBA) means the total broad band sound level of the noise spectrum as measured using the "A-weighted network" of a sound level meter (SML). The unit of measurement is the dBA. All sound level meter settings shall be for slow response, except for impulsive noise measurements which shall be fast response.

Ambient sound means the all-encompassing sound associated with a given environment, being usually a composite of sounds from many sources near and far. For the purposes of this section, ambient sound level is the level obtained when the sound level is averaged over a period of at least 15 minutes without inclusion of sound from occasional or occasional and transient sources, at the location and time of day near that at which a comparison is to be made.

Amplified sound means sound augmented by any electronic means that increases the sound level or volume.

Decibel (dB) means a unit for describing the amplitude of 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 micronewtons per square meter.

Impulsive sound means a noise which is characterized by brief excursions of sound pressure which significantly exceed the ambient sound level.

Nearest adjacent property line means the property line closest to the noise source.

Noise, or noise disturbance, means any sound that:

- (1) Exceeds the maximum permitted sound levels set out in Table 1 of this section; or
- (2) Is loud and raucous so as to unreasonably disturb, injure or endanger the comfort, repose, health, peace, tranquility or safety of reasonable persons of ordinary sensibilities;
- (3) Constitutes a breach of the peace or a public nuisance;
- (4) Is plainly audible at a distance of 25 feet or more from the property line;
- (5) With respect to vehicles and vessels, is plainly audible at a distance of 25 feet from the noise source.

Nonresidentially zoned areas means those zoning districts which are not zoned primarily for single-family or multifamily use. Nonresidentially zoned areas include all commercial, industrial, public service, PD for commercial uses and other districts which permit nonresidential uses.

Octave band means all of the components in a sound spectrum whose frequencies are between two sine-wave components separated by an octave.

Property line means an imaginary line exterior to any enclosed structure, at the ground surface, which separates the real property owned by one person from that owned by another person, and its vertical extension.

Pure tone means any sound which can be distinctly heard as a single pitch or a set of single

itches. For the purposes of measurement, a pure tone shall exist if the one-third octave band sound pressure level in the band with the tone exceeds arithmetic value of the sound pressure levels of the two contiguous one-third octave bands by five dB for center frequencies of 500 Hz and above and by eight dB for center frequencies between 160 and 400 Hz and by 15 dB for center frequencies less than or equal to 125 Hz.

Receiving property means the property which is receiving the noise.

Sound means an oscillation in pressure, stress, particle displacement, particle velocity or other physical parameter, in a medium with internal forces. The description of sound may include any characteristic of such sound including duration, intensity and frequency.

Sound amplifying equipment means any machine or device for the amplification of human voice, music, or any other sound.

Sound level meter means an instrument to measure the sound pressure level of relatively continuous and broadband noises. The sound level meter used to determine compliance with this section shall meet or exceed the requirements for Type 2 sound level meter in accordance with ANSI Standard S1.4.

(b) *General prohibitions.*

- (1) It shall be unlawful and prohibited for any person to make, continue, or cause to be made or continued any noise, as defined in this section, or to create any noise disturbance within the limits of the city.
- (2) It shall be unlawful and prohibited for any person owning or in possession of any building or premises to use, allow the use, or rent the same for any business or residential use, or for any purpose of pleasure or recreation if such use makes, continues, or causes to be made or continued, any noise, as defined in this section, within the limits of the city.

(c) *Specific noise prohibitions.* The following acts, where meeting the definition of noise above, are declared to be examples and prima facie evidence of noises that constitute a noise disturbance, breach of the peace and public nuisance:

- (1) *Radios, audio or visual equipment, sound equipment, sound amplification devices, exterior loudspeakers, musical instruments and similar devices.* Operating or permitting the use or operation of any radio, musical instrument, audio or visual equipment, sound amplification devices, exterior loudspeaker, or other device for the production or reproduction of sound in such a manner as to cause noise. The operation of any such device for the production or reproduction of sound:
 - a. Between the hours of 10:00 p.m. and 7:00 a.m. shall be controlled so that it is not loud or disturbing or a nuisance to persons within the area of audibility, or
 - b. At any time with louder volume than is necessary for convenient hearing for persons who are in the same dwelling unit of any multiple dwelling in which such device is operated, shall be deemed prima facie evidence of a violation of this section.

Radios, audio systems and similar devices associated with motor vehicles or motorboats, shall not be operated in such a manner as to create noise that is plainly audible at 25 feet or more from such device, when operated on a public right-of-way, waterways, beaches, or public space.

- (2) *Engine mufflers.* Operating any internal combustion engine, including such an engine associated with a motorboat, or motor vehicle without a muffler or other device at least

as effective as that installed as original equipment by the manufacturer, which will effectively prevent loud or explosive noises therefrom.

- (3) *Motor vehicle, motorcycle or motorboat repair in residential areas.* The noncommercial repairing, rebuilding, modifying or testing of any motor vehicle, off-road vehicle, or motorboat within or abutting any residential land use designation in such a manner as to create noise across a real property line between the hours of 10:00 p.m. and 7:00 a.m.
- (4) *Activities in the vicinity of schools, churches, and health care facilities.* Creating noise on any street adjacent to any school, church, or health care facility, which unreasonably interferes with the workings of such institution, or which disturbs or unduly annoys patients in a health care facility.
- (5) *Peddling, hawking, or vending.* Peddling, hawking, or vending, including shouting, crying out by peddlers, hawkers or vendors along or on a roadway.
- (6) *Yelling, shouting.* Yelling, shouting, hooting, whistling, singing, or the making of similar noises, and loud, boisterous conduct other than normal conversation at reasonable levels, inside of or on the grounds of any public or private property between the hours of 10:00 p.m. to 7:00 a.m., so as to annoy or disturb the quiet, comfort, or repose of other persons or create a disturbance.
- (7) *Horns, signal devices.* Sounding of any horn or audible signal device of any motor vehicle, boat, engine, or machine of any kind while not in motion, nor shall such horn or signal device be sounded under any circumstances except as required by law, or as a danger warning, nor shall it be sounded for any unnecessary or unreasonable period of time.
- (8) *Air conditioning units and other mechanical equipment including, pool or spa heaters and pumps, and regularly-used generators, irrigation pumps and exhaust fans.* Operating any noise creating fan or blower, air conditioner, compressor unit, pool heaters, pool pumps, heat pumps, or the electric motor or any engine used to drive such device, the operation of which causes excessive and unnecessary noise, unless such noise is muffled and deadened by adequate noise compression and muffling devices to minimize annoyance and disturbance to persons within range of hearing. Noise shall be presumed excessive if it exceeds decibel limitations prescribed in Table 1 when measured at the property line of the receiving property. Mechanical equipment installed before December, 2006 shall not exceed 60 decibels (dBA).
- (9) *Drums, cymbals, musical instruments and loudspeakers.* Creating, making, or maintaining any noise by the use of any drum, cymbals, loudspeaker, or other similar instruments in the city for the purpose of attracting attention to any performance, show, sale, or display of merchandise, or place of business. This provision shall not apply to permitted special events.
- (10) *Bells or sirens on vehicles.* Using, in connection with an unauthorized vehicle, any bell or siren similar to that used on ambulances or vehicles of the sheriff, fire departments, and other public safety agencies.
- (11) *Skateboard ramps.* Using any skateboard ramp or similar configuration for skateboarding or rollerblading between 10:00 p.m. and 7:00 a.m. in a residential land use designation in such a manner that results in noise across a real property line.
- (12) *Powered model vehicles.* Operating or permitting the operation of powered model vehicles in such a manner as to create noise across a real property line between the hours of 9:00 p.m. and 7:00 a.m.
- (13) *Animal noises.* Allowing an animal to habitually bark, whine, howl, squawk, screech,

or cause any other noise which is objectionable due to pitch, frequency, duration, or timing.

- (14) *Lawn maintenance.* Permitted days and hours of operation for lawn maintenance, tree trimming and tree removal. Lawn maintenance activities, tree trimming activities, and tree removal activities may be conducted only during the following hours, Monday through Sunday except New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day and Christmas Day:
- a. *Monday through Friday hours of operation:*
 1. In residential areas: 7:00 a.m. to 7:00 p.m.
 2. In nonresidential areas: 6:30 a.m. to 7:00 p.m.
 - b. *Saturday hours of operation:*
 1. In residential areas: 8:00 a.m. to 7:00 p.m.
 2. Nonresidential areas: 6:30 a.m. to 7:00 p.m.
 - c. *Sunday hours of operation:*
 1. Lawn maintenance activities in residential and nonresidential areas may occur on Sunday between the hours of 8:00 a.m. and 7:00 p.m.
 2. Tree trimming or tree removal shall not occur on Sunday in residential or nonresidential areas unless a special permit is obtained in accordance with this subsection.
- (15) *Outdoor live entertainment.* Providing outdoor live entertainment, as authorized in section 56-125 of the Code of Ordinances
- a. In such a manner as to create noise as defined in this section, or,
 - b. In excess of the decibel limitations prescribed in Table 1.
- (d) *Exemptions.* The following noises shall be exempt from the restrictions set forth in the other sections of this article:
- (1) Noises of authorized safety signals and warning devices.
 - (2) Noises resulting from any authorized emergency vehicle, when responding to an emergency call or acting in time of emergency or any other public safety operation.
 - (3) Noises resulting from emergency work, which is to be construed as work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from any imminent exposure to danger.
 - (4) Noises incidental to and necessary for city approved solid waste collection equipment, public works construction and maintenance; and police or fire training.
 - a. The city manager, may grant a waiver, may prescribe any reasonable conditions or requirements it deems necessary to minimize adverse effects upon the community or the surrounding neighborhood.
 - b. A waiver may be given upon finding that it will not unreasonably disturb, injure or endanger the comfort, repose, health, peace or safety of any affected persons because it is temporary in nature, adjacent property owners do not object, or for necessity or unavoidability.
 - c. Waivers may be issued for no longer than 30 days, renewable by further application to the city manager.
- (e) *Octave band levels.* In addition to the noise limitations listed in this section, for any source or sound that can be detected on a receiving property, when measured at the nearest point of the property line of the receiving property, the maximum allowable sound level limit for the individual octave bands shall comply with Table 1. In no case shall the noise level on the

premises of any other occupied property measured at a point on the nearest adjacent property line closest to the noise source, or if a condominium, apartment house, duplex, or attached business, within any adjoining unit, exceed the ambient noise level by more than five decibels.

Table 1

Octave Band Center Frequency (In Hertz.)	Residential Site or Unit*		Non Residential Site or Unit*		Manufacturing, Industrial, or Agricultural Site or Unit*
	Day 7 a.m.— 10 p.m.	Night 10 p.m.— 7 a.m.	Day 7 a.m.— 10 p.m.	Night 10 p.m.— 7 a.m.	
31.5	69	64	74	69	79
63	69	64	74	69	79
125	66	61	71	66	76
250	62	57	67	62	72
500	58	53	63	58	68
1,000	53	48	58	53	63
2,000	49	44	54	49	59
4,000	46	41	51	46	56
8,000	42	37	47	42	52
DBA	60	55	65	60	70

* These uses pertain to the receiving site.

- (f) *Enforcement and penalties.* A violation of this section is a non-criminal infraction, and the civil penalty is \$100.00 for the first offense and \$500.00 for each subsequent offense occurring within one year after a finding of violation of the previous offense or a plea of no contest. It is also enforceable and punishable as provided in section 1-15(b), (c),(d) and (e) of this Code. In addition, if a permit for live entertainment, a special event or extended hours has been issued and the permit holder or person acting under the permit, violates this section, the permit is subject to revocation or non-renewal.

(Comp. Dev. Code 1990, § 8-9-9; Code 1994, § 106-239; Ord. No. 97-7987, § 1, 6-4-1997; Ord. No. 98-8389, § 1, 10-21-1998; Ord. No. 99-8593, § 10, 8-4-1999; Ord. No. 01-9179, § 1, 5-2-2001; Ord. No. 06-11495, § 2, 12-20-2006; Ord. No. 09-12351, § 1, 2-18-2009; Ord. No. 13-13306, § 1, 6-12-2013)

Cross reference— Live entertainment permit, § 56-125.

Tampa, Florida, Code of Ordinances >> - CODE OF ORDINANCES >> Chapter 14 - OFFENSES >>
ARTICLE III. NOISE >>

ARTICLE III. NOISE ^[8]

Sec. 14-151. Excessive noise prohibited.

Sec. 14-152. Excessive noise in motor vehicles is prohibited.

Secs. 14-153—14-175. Reserved.

Sec. 14-151. Excessive noise prohibited.

- (a) *Prohibition of excessive noise.* It shall be unlawful for any person(s), to permit, cause, allow, amplify, create, emit, or sustain unreasonably excessive noise on any property, including air space thereof, located in the City of Tampa. Unreasonably excessive noise shall be that noise which exceeds the noise limitations set forth in subsection (b).
- (b) *Noise limitations.*
- (1) Within the Central Business District, the Ybor City Historic District and the Channel District as each is delineated in chapter 27, City of Tampa Code, the maximum dBA and dBC sound levels permitted on any property shall be as follows:
- The average measurement taken between ten (10) and twenty (20) seconds shall be no greater than the maximum levels set out below. The measurement shall be taken from the property line, or individual lease boundary in the case of property which has been subdivided by the execution of individual leases, of the noise generating property:
- a. Eighty-five (85) dBA or eight-seven (87) dBC between the hours of 6:00 p.m. and 3:00 a.m.
- b. Sixty-five (65) dBA or seventy-five (75) dBC between the hours of 3:00 a.m. and 6:00 p.m.
- (2) In all areas of the City of Tampa other than those areas listed in subsection (b)(1) above:
- a. The average measurement taken between (10) and twenty (20) seconds shall be no greater than the maximum levels set out below. The measurement shall be taken from a receiving property at the property line closest to the noise generating property.
1. Sixty (60) dBA or sixty-five (65) dBC between the hours of 7:00 a.m. and 10:00 p.m.
2. Fifty-five (55) dBA or sixty-five (65) dBC between the hours of 10:00 p.m. and 7:00 a.m.; or
- b. In addition to subsection (b)(2) a., unreasonably excessive noise is also noise that is unreasonably loud and raucous. Noise which is plainly audible at a distance of one hundred (100) feet or more in any direction shall create a rebuttable presumption of a violation of this subsection. This includes, but is not limited to, amplified sound and self-contained, portable, hand-held music or sound amplification or reproduction equipment operated on a private property, public property, or public right-of-way.
- "Plainly audible"* shall mean any sound that can be clearly heard by a person

using his normal hearing faculties, at a distance of one hundred (100) feet or more from the source of the noise.

To determine whether sound is "plainly audible," measurements shall be taken in accordance with the following:

1. The primary means of detection shall be by means of the officer's ordinary auditory senses, so long as the officer's hearing is not enhanced by any device, such as a microphone or hearing aid.
 2. The officer must have a direct line of sight and hearing, to the location producing the sound so that the officer can readily identify the offending location and the distance involved.
 3. The officer need not determine the particular words or phrases being produced or the name of any song or artist producing the sound. The detection of a rhythmic bass reverberating type sound is sufficient to constitute a plainly audible sound.
- (3) Unless otherwise exempted under subsection (h), all persons or businesses who own or operate devices, equipment, or machinery which generate noise levels in excess of the maximum dBA or dBC levels listed in subsection (b)(1) or (b)(2)a. above, shall turn off such devices, equipment, or machinery by 10:00 p.m., or at the conclusion of operating hours for the business if such operating hours conclude prior to 10:00 p.m., unless such persons or business can demonstrate that such devices, equipment, or machinery must remain in operation beyond the operating hours of the business in order to avoid personal injury to persons or physical damage to property.
- (c) Other agencies with jurisdiction over noise in the City of Tampa shall have concurrent jurisdiction and any applicable rules and regulations established by such agencies shall remain in full force and effect. In the event of a conflict between this section and regulations of any other agency, the stricter regulation shall apply. The City of Tampa shall enforce this section in a cooperative effort with such agencies.
- (d) The noise limitation standards for industrial, manufacturing and processing operations are contained in section 27-282.7, City of Tampa Code.
- (e) The noise limitation standards for construction are contained in section 5-301.2, City of Tampa Code.
- (f) The noise limitation standards for material recovery facilities are contained in section 27-282.21, City of Tampa Code.
- (g) The noise limitation standards for motor vehicles are contained in section 14-152, City of Tampa Code.
- (h) *Exemptions.* The provisions of this section shall not apply to:
- (1) The use of amplified sound on school or church grounds during school or church sponsored activities;
 - (2) Common carrier stations, including, but not limited to, bus stations, transit malls, train stations, ship wharves and docks and airports;
 - (3) The operation of buses, trains, ships, airplanes, helicopters and trucks in good repair;
 - (4) Activities in the fields, grounds or facilities of any sporting arena, stadium, or sports complex to which the public or community has access;
 - (5) Road festivals, parades, fireworks displays and special events for which an appropriate permit has been obtained from the City of Tampa in compliance with any conditions imposed by that permit and within the permitted area and any privately owned property located contiguous with any public right-of-way that is closed pursuant

- to a parade, road festival, or special event permit;
- (6) Theme parks and amusement attractions as defined by Florida Statutes, water parks, zoos and aquariums and their related amenities and service areas;
 - (7) The reasonable playing of unamplified musical instruments;
 - (8) Noise which results from the reasonable use, recreational enjoyment or maintenance of residential property located in the City of Tampa including, but not limited to, noise made by children, lawn mowers, chippers, clippers, blowers, tools, power tools and tractors;
 - (9) Noise which results from the reasonable maintenance of commercial and governmental property including, but not limited to, lawn mowers, chippers, clippers, blowers, tools, power tools and tractors;
 - (10) Reasonable noise made at the direction of a governmental entity or utility;
 - (11) Church bells and chimes;
 - (12) Reasonable noise made at events associated with public or private schools or religious institutions, such as fairs, festivals, cultural events, carnivals, recreational activities, etc.;
 - (13) The reasonable use of the unamplified human voice;
 - (14) The emission of sound for the purpose of alerting the public of an emergency or the performance of emergency work;
 - (15) Reasonable intermittent or occasional excessive noise that is infrequent;
 - (16) The reasonable and intermittent barking of dogs and sounds made by other animals as governed by sections 19-47 and 19-77, City of Tampa Code;
 - (17) The sounds made by children and adults on school and athletic grounds during school curricular and extra-curricular activities; and
 - (18) Festivals or events occurring on public parks which are permitted or approved by the parks and recreation department of the city.
- (i) *Prohibition against speakers in rights-of-way and air space.* It shall be unlawful for any person to place, locate or permit the placement of speakers or sound systems within public rights-of-way, including the air space above such public rights-of-way.
- (j) (1) *Enforcement.* Whenever a law enforcement officer observes a violation of subsection (b)(1) or b(2)a., the law enforcement officer shall initially issue a warning in writing to the individual(s) responsible for the occurrence of the noise violation. The warning shall state the dBA and/or dBC readings obtained by the officer during measurement, and the maximum dBA and dBC levels established by the subsection. The warning shall also state that the generated sound level on the property must be reduced within five (5) minutes. Thereafter, each remeasurement for noise generated from that business for the subsequent twelve (12) months which exceeds the maximum permissible sound levels established by subsection (b)(1) or b(2)a. shall constitute a separate violation pursuant to subsection (j)(2) for any person(s) who received a warning.
- For violations of subsections (b)(2)b., or (b)(3), a law enforcement officer shall issue a verbal warning to the property owner or individual(s) responsible for the violation. If the violation continues after the verbal warning, a civil citation may be issued pursuant to subsection (j)(2).
- (2) *Prosecution and penalties.* Any violation of subsection (b)(1) or (b)(2)a., by an individual who has received a written warning within the past twelve (12) months of

the violation, shall be prosecuted and punished in accordance with section 1-6 section 1-6, City of Tampa Code. Subsections (b)(2) b., or (b)(3) shall be enforced in accordance with chapter 23.5, City of Tampa Code.

- (3) Within thirty (30) days following an arrest or the issuance of a notice to appear for violation of subsection (b)(1) or (b)(2)a., the city attorney's office shall provide a letter, along with a copy of the notice to appear or affidavit of arrest, to the address as listed in the most current ad valorem tax rolls, to the property owner (or to the registered agent if the property owner is a corporation) of the premises where the violation occurred. The letter shall be sent by either U.S. mail, certified return receipt requested, or by personal service. The letter shall inform the property owner of the violation which occurred on their property, and inform the property owner that, if the property where the violation occurred is permitted for the sale of alcoholic beverages, a conviction on this, or subsequent violations, could result in the setting of a public hearing before city council for the purpose of determining whether the alcoholic beverage special use permit should be suspended or revoked pursuant to section 27-318, City of Tampa Code.

(Ord. No. 89-238, § 2(24-101), 9-28-89; Ord. No. 90-88, § 1, 3-22-90; Ord. No. 2006-37, § 9, 2-9-06; Ord. No. 2013-93, § 1, 7-18-2013)

Sec. 14-152. Excessive noise in motor vehicles is prohibited.

- (a) It is unlawful for any person who operates or occupies a motor vehicle in the City of Tampa to operate or amplify the sound produced by a radio or other mechanical or electrical sound making device or instrument from within the motor vehicle so that the sound is unreasonably excessive. Sound is "unreasonably excessive" when it is plainly audible at a distance of fifty (50) feet or more from the motor vehicle.
- (b) For purposes of this section, the following definitions apply:
- "Plainly audible"* means any sound produced by a radio or other mechanical or electrical sound making device or instrument from within the motor vehicle, including sound produced by a portable sound making device, that can be clearly heard outside the vehicle by a person using his or her normal hearing faculties, at a distance of fifty (50) feet or more from a motor vehicle.
- "Officer"* means any sworn law enforcement officer.
- (c) To determine whether sound is "plainly audible," measurements shall be taken in accordance with the following:
- (1) The primary means of detection shall be by means of the officer's ordinary auditory senses, so long as the officer's hearing is not enhanced by any device, such as a microphone or hearing aid.
 - (2) The officer must have a direct line of sight and hearing, to the motor vehicle producing the sound so that the officer can readily identify the offending motor vehicle and the distance involved.
 - (3) The officer need not determine the particular words or phrases being produced or the name of any song or artist producing the sound. The detection of a rhythmic bass reverberating type sound is sufficient to constitute a plainly audible sound.
- (d) Violations. All violations of this section present a serious threat to health, safety, and welfare. All violations of this section are irreparable and irreversible in nature. Violations of this section shall be enforced pursuant to section 23.5-5(b) or as otherwise provided for in Tampa Code of Ordinances.

(Ord. No. 2013-80, § 1, 6-6-2013)

Secs. 14-153—14-175. Reserved.

FOOTNOTE(S):

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Cross reference— Loud noise generated by construction activity near residentially zoned property, § 5-467; watercraft unnecessarily using horns, whistles, bells or blowing steam whistles, §§ 14-210, 14-211; hours of dredging operations, § 14-219; offensive conditions declared public nuisance, § 19-47. [\(Back\)](#)

Delray Beach, Florida, Code of Ordinances >> CHAPTER 99. NOISE CONTROL >>

CHAPTER 99. NOISE CONTROL [Z]

Sec. 99.01. SCOPE.

Sec. 99.02. DEFINITIONS.

Sec. 99.03. LOUD AND UNNECESSARY NOISES PROHIBITED.

Sec. 99.04. EXEMPTIONS.

Sec. 99.05. TEMPORARY PERMITS.

Sec. 99.06. NOTICE OF VIOLATION.

Sec. 99.07. ABATEMENT ORDERS.

Sec. 99.08. PENALTY.

Sec. 99.09. NUISANCE.

Sec. 99.01. SCOPE.

This Chapter shall apply to the control of all sound and vibration originating within the limits of the City.

(Ord. No. 27-12, § 2. passed 9/4/12)

Sec. 99.02. DEFINITIONS.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Amplification device. Any instrument, machine, or system, which by electronic means augments sound by increasing the sound level or volume.

Amplified sound. Sound augmented by any electronic means that increases the sound level or volume.

Commercial area. For purposes of this ordinance only, commercial area shall include all nonresidential and nonindustrial zoning districts:

- (1) Neighborhood Commercial (NC);
- (2) Planned Commercial (PC);
- (3) General Commercial (GC);
- (4) Automotive Commercial (AC);
- (5) Central Business District (CBD);
- (6) Central Business District—Rail Corridor (CBD-RC);
- (7) Residential Office (RO);
- (8) Old School Square Historic Acts District (OSSHAD);
- (9) Professional Office District (POD);
- (10) Planned Office Center (POC);
- (11) Special Activities District (SAD); and

- (12) Resort/Tourism (RI).
- (13) Mixed Residential, Office and Commercial District (MROC)

Industrial area. All that area located in the following zoning districts:

- (1) Light Industrial (LI);
- (2) Mixed Industrial and Commercial (MIC);
- (3) Industrial (I); and
- (4) Planned Commerce Center (PCC).

Offense. A notice of violation that has not been appealed timely or a finding of violation by a special master following the appeal of a violation.

One day. A 24-hour period from noon to noon.

Premises. Any real property or parcel of land, including the buildings, structures or other improvements thereon.

Residential area. For purposes of this chapter only, residential area shall include the following zoning districts:

- (1) R-1-AAA;
- (2) R-1-AAA-B;
- (3) R-1-AA;
- (4) R-1-AA-B;
- (5) R-1-A;
- (6) R-1-A-B;
- (7) RM;
- (8) RR;
- (9) A;
- (10) PRD;
- (11) MH;
- (12) RL;
- (13) Community Facilities (CF);
- (14) Open Space (OS);
- (15) Open Space and Recreation (OSR); and
- (16) Conservation District (CD).

Violator. A person or entity determined or cited by a code inspector as being in violation of the provisions of this article.

(Ord. No. 27-12. § 2. passed 9/4/12)

Sec. 99.03. LOUD AND UNNECESSARY NOISES PROHIBITED.

It shall be unlawful for any person to make, continue or cause to be made or continued any unreasonably loud, excessive, or unnecessary noise.

- (A) *Certain Acts Declared Unlawful.* The following acts, and the causing thereof, among others, are declared to be unreasonably loud, excessive, or unnecessary noises and in violation of this Chapter:

- (1) *Radios, televisions, musical instruments, etc.:* Using, operating, or permitting to be played, used or operated any radio receiving set, television set, musical instrument, sound amplifier or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto.
 - (a) Violation will occur if the noise source is located within an automobile, in or upon a public street, highway, building, sidewalk, park, thoroughfare or other public area, or is located in or upon a public access area, such as a shopping mall, parking lot or the like, or on any private property, and the sound is plainly audible more than fifty (50) feet from its source or, if the noise source is in a building or other structure and the sound can be heard more than one hundred (100) feet away from the building or structure or the boundaries of the property surrounding such building or structure, whichever is greater (except for activities open to the public and for which a permit has been issued by the City according to the criteria set forth in Section 99.05).
 - (b) Where the noise source is located in a building or other structure, the owner, occupant, resident manager or other person in charge of the premises shall, if present, be presumed to have permitted the noise in the absence of evidence to the contrary.
- (2) *Loudspeakers or Public Address Systems.* The unreasonably loud use or operation of any loudspeaker, public address system, sound truck, or similar device within a residential zone whether the source is located indoors or out-of-doors or within all commercial zoning districts of the City when the source is located out-of-doors only. This section does not include two-way communication systems at drive-in facilities and/or activities for which a permit has been issued by the City Manager or his/her designees according to the criteria set forth in Section 99.05
- (3) *Animals and Birds.* Owning, possessing or harboring any dog, animal or bird which causes frequent, habitual or long continued noise which is plainly audible at a distance of one hundred (100) feet from the building, structure or yard in which the dog, animal or bird is located. This provision shall not apply to public zoos.
- (4) *Loading and Unloading.* Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans or similar objects in a manner as to cause an unreasonably loud or excessive sound.
- (5) *Construction.* Operating or permitting the operation of any tools or equipment used in construction, drilling or demolition work in such a manner as to create an unreasonably loud or excessive sound.
 - (a) The provisions of subsection (A)(5) of this Section shall not prohibit construction, drilling or demolition work between the hours of 7:00 a.m. and 7:00 p.m. on weekdays, nor prohibit the use of any temporary pumps or machinery which are required to be operated twenty-four (24) hours a day in conjunction with construction work. Subsection (A)(5) shall also not apply to emergency work for public utilities or where there is an exemption pursuant to Section 99.04 or where a temporary permit has been issued pursuant to Section 99.05
 - (b) The provisions of subsection (A)(5) shall not apply to the use of domestic power tools subject to subsection (A)(13) of this Section.

- (6) *Vehicle or Motorboat Repairs and Testing.* Repairing, rebuilding, modifying or testing any motor vehicle, motorcycle or motorboat in a manner as to cause an unreasonably loud or excessive sound.
- (7) *Refuse Collection Vehicles.* No person shall collect refuse with a refuse collection vehicle between the hours of 7:00 p.m. and 6:00 a.m.
- (8) *Stationary Mechanical Noise Source.* Operating or permitting the operation of stationary mechanical sources including but not limited to pumps (except for pumping done pursuant to division (A)(5)(a) of this Section), motors, fans, compressors, powered tools or similar devices, air conditioning or air-handling systems, and cooling towers in a manner as to exceed sixty (60) decibels (dB[A]) when measured at any point on neighboring property line.
- (9) *Vibration.* Operating or permitting the operation of any device on a property so as to produce vibration noticeable by a person of reasonable sensitivity at the property line, including bass emanating from audio speakers.
- (10) *Stationary Nonemergency Signaling Devices.* Sound or permitting the sounding of any signal from any stationary bell, chime, siren, whistle or similar device intended primarily for nonemergency purposes, from any place, for more than ten (10) seconds in any hourly period. Devices used in conjunction with places of religious worship shall be exempt from the operation of this provision.
- (11) *Emergency Signaling Devices.*
 - (a) The intentional sounding or permitting the sounding outdoors of any fire, burglar or civil defense alarm, siren, whistle or similar stationary emergency signaling devices, except for emergency purposes or for testing, as provided in subsection (A)(11)(b) of this Section.
 - (b)
 - (1) Testing of a stationary emergency signaling device shall not occur before 7:00 a.m. or after 7:00 p.m. Any testing shall use only the minimum cycle test time. In no case shall the test time exceed sixty (60) seconds.
 - (2) Testing of the complete emergency signaling system, including the functioning of the emergency signaling device and the personnel response to the emergency signaling device shall not occur more than once in each calendar month. This testing shall not occur before 7:00 a.m. or after 7:00 p.m. The time limit for the test time specified in subsection (A)(11)(b)(1) shall not apply to the complete system testing.
 - (c) The sounding or permitting the sounding of any exterior burglar or fire alarm shall comply with the provisions of Chapter 112
- (12) *Motor Vehicles Operating on a Public Right-of-Way.* Motor vehicles on a Public Right-of-Way are regulated as set forth in F.S. Sections 316.272 and 316.293, as currently exists or as may hereafter be amended.
- (13) *Domestic Power Tools.* Operating or permitting the operation of any mechanically powered saw, drill, sander, router, grinder, lawn or garden tool, or similar device used in residential areas between the hours of 8:00 p.m. and 7:00 a.m.
- (14) *Schools, Courts, Hospitals.* The creation of any excessive or unreasonably loud noise on any street adjacent to any school, institution of learning, house of worship or court while the same are in use, or adjacent to any hospital, which unreasonably interferes with the working of such institutions, or which disturbs or unduly annoys the patients in the hospital, provided conspicuous signs are displayed in such streets indicating that it is a school, hospital or court street.

- (15) *Tampering.* The removal or rendering inoperative by any person other than for purposes of maintenance, repair or replacement, of any noise control device or element of design of any product having those devices.

(Ord. No. 27-12, § 2, passed 9/4/12)

Sec. 99.04. EXEMPTIONS.

The provisions of this Chapter shall not apply to:

- (A) Radios, sirens, horns and bells and other sounds created by police, fire and other emergency response vehicles;
- (B) Parades, fireworks displays, and other activities for which a permit has been obtained from the City Manager or his/her designee pursuant to Section 99.05, within such hours and in accordance with such restrictions as may be imposed as conditions for the issuance of the permit; or
- (C) The emission of sound in the performance of an activity for which, pursuant to this Chapter, the City Manager has expressly given a temporary, emergency exception from this Chapter when time would not permit the obtaining of a temporary permit pursuant to Section 99.05
- (D) Noises resulting from emergency work, including but not limited to the use of generators or other equipment by communications and public utility companies in connection with a commercial power outage and/or restoration of service operations and the use of emergency generators due to loss of power other than non-payment of utility services. The testing of emergency generators shall not occur before 7:00 a.m. or after 7:00 p.m. and shall not occur more than once in each week.

(Ord. No. 27-12, § 2, passed 9/4/12)

Sec. 99.05. TEMPORARY PERMITS.

- (A) *Requirements and procedures.* The City Manager or his or her designee is authorized to issue a temporary permit to allow noise when produced by a temporary use or activity as provided in this section. The City Manager may prescribe any reasonable conditions necessary to minimize any adverse effect upon the community. A permit granted under this article shall contain all conditions upon which the permit has been granted, including the decibel limit and the period of time for which the permit has been granted. Such relief may be granted in the following situations:
- (1) *Code compliance in progress.* When an applicant is utilizing best efforts to comply with the noise restrictions in this Chapter, but additional time is required for the applicant to modify his activity to comply and no reasonable alternative is available to the applicant, such permits may be granted for a period of time not to exceed ten (10) consecutive days.
 - (2) *Construction.* When construction activities pursuant to a valid building permit cannot be carried out in a manner which would comply with Section 99.03, notwithstanding that all equipment is operated in accordance with manufacturer's specifications, is in good repair and utilizes all noise baffling methods as specified by the manufacturer.
 - (a) The City Manager may authorize any necessary construction activities to occur earlier and/or later than normally allowed based upon a finding that:
 - 1. There are no reasonable alternatives;
 - 2. There are no prior code violation adjudications or fines and no pending

construction noise violation cases against the property owner, contractor, or the construction site; and

3. There is a significant community need, public purpose or benefit.
 - (b) The work authorized by the City Manager may be conditioned upon reasonable notice to surrounding property owners and tenants. Permits issued pursuant to such authorization shall not exceed seven (7) consecutive days.
 - (c) Notwithstanding the provisions 2(a) and (b), temporary permits shall be subject to authorization by the building official under emergency circumstances or when the building official determines that for reasons of technical necessity work earlier or later than the time frames normally allowed or on any day (including Sundays or national holidays) is required. The work authorized by the building official pursuant to this subsection shall be conditioned upon reasonable notice to surrounding property owners and tenants.
- (B) *Violation of temporary permit.* Failure to comply with any condition of a temporary permit issued pursuant to this section shall constitute a violation and shall result in enforcement procedures and penalties as set forth in Section 99.08
- (C) *Revocation of temporary permits.* Any temporary permit may be immediately revoked if the City Manager finds that an emergency condition exists involving serious danger to the public health, safety, or welfare; if the permit holder failed to disclose or misrepresented material information in the permit application or in the permit application process; or that there was a failure to comply with any condition of a particular temporary permit.
- (D) The issuance of a temporary permit is a privilege and does not constitute a right or expectation that said permit will remain in effect. Any permits issued pursuant to this section shall not constitute or be deemed precedent for the granting of any future permits.
- (E) *Appeals.* Appeals of the decision of the City Manager or his/her designee shall be made to the City Commission by submitting the appeal in writing to the City Clerk within ten (10) days of the denial. Decisions of the City Commission shall be final subject to appeal of such decision within thirty (30) days to the Circuit Court of Palm Beach County.

(Ord. No. 27-12, § 2, passed 12/11/12)

Sec. 99.06. NOTICE OF VIOLATION.

Except where a person is acting in good faith to comply with an abatement order issued pursuant to subsection 99.07(A), violation of any provision shall be cause for a notice of violation to be issued by the City.

(Ord. No. 27-12, § 2, passed 9/4/12)

Sec. 99.07. ABATEMENT ORDERS.

- (A) Except as provided for in subsection (B) below, in lieu of issuing a notice of violation as provided for in Section 99.06, the City official responsible for enforcement of any provision of this Chapter may issue an order requiring abatement of any source of sound or vibration alleged to be in violation of this Chapter within a reasonable time period.
- (B) An abatement order shall not be issued:
 - (1) For any violation governed by Section 99.08(A)(2); or

- (2) When the City has reason to believe that there will not be compliance with the abatement order.

(Ord. No. 27-12, § 2, passed 9/4/12)

Sec. 99.08. PENALTY.

- (A) The following civil fines and penalties shall be imposed for violations of this article:
 - (1) If the offense is the first offense, a maximum fine of two hundred fifty dollars (\$250.00) may be imposed.
 - (2) If the offense is the second offense within the preceding twelve (12) months, a maximum fine of five hundred dollars (\$500.00) may be imposed.
- (B) Each violation shall constitute a separate offense for which a separate fine may be imposed. A person may receive a separate notice of violation once every hour if a violation has occurred at any time within that period. An offense shall be deemed to have occurred on the date the violation occurred. An offense occurring 12 months after the last offense shall be treated as a first offense for purposes of incurring new fines and penalties.
- (C) This Chapter shall be enforced using procedures set forth in Section 37.45 or Section 99.09 of the City's Code of Ordinances, or by any other means available to the City.

(Ord. No. 27-12, § 2, passed 9/4/12)

Sec. 99.09. NUISANCE.

Any violation of this article shall constitute a nuisance. The City attorney may bring suit on behalf of the City, or any affected citizen may bring suit in his name, against the person or persons causing or maintaining the violation, and against the owner/agent of the building or property on which the violation exists.

(Ord. No. 27-12, § 2, passed 9/4/12)

FOOTNOTE(S):

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Editor's note— Ord. No. 27-12, § 2, adopted September 4, 2012, repealed the former Chapter 99, §§ 99.01—99.06, 99.15—99.18 and 99.30—99.34, and enacted a new Chapter 99 as set out herein. The former Chapter 99 pertained to similar subject matter. See the Code Comparative Table for the Chapter history. [\(Back\)](#)

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ARTICLE IV. NOISE ^[4]

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Secs. 38-167—38-199. Reserved.

Sec. 38-151. Scope.

This article shall be effective throughout the city limits.

(Code 1988, § 11-48)

Sec. 38-152. Purpose.

The purpose of this article is to prevent and prohibit excessive and unnecessary noise and provide for the abatement of excessive and unnecessary noise in order to protect the health, safety and general welfare of people in the city and to restrict excessive unnecessary noise throughout the city.

(Code 1988, § 11-49; Ord. No. 05-36, § 2, 7-14-05)

Sec. 38-153. Terminology, standards and definitions.

- (a) *Terminology and standards.* All technical acoustical terminology and standards used in this article which are not defined in subsection (b) of this section shall be read or construed in conformance with applicable publications of the American National Standards Institute, Inc. (ANSI), or its successor body.
- (b) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

A-weighted sound pressure level means the sound pressure level, in decibels, as measured on a sound level meter using the A-weighting network. The level so read shall be designated as _____ db(A) or _____ dBA.

Ambient noise level means the sound pressure level of the all-encompassing noise emanating from a given environment, usually being a composite of sounds from many sources.

Amplified sound equipment means electronic or other equipment that projects or transmits music, sound waves, vibration or speech, including but not limited to, a loudspeaker, megaphone, amplifier or public address system.

Commercial use means uses allowed under the zoning designations of PCD, C-1, C-2, and C-4.

Construction means any site preparation, assembly, erection, substantial repair, alteration, or similar action, for or on public or private thoroughfares, structures, utilities or similar property.

Decibel or dB means a unit for measuring the volume of sound; it is a logarithmic (dimensionless) unit of measure used in describing the amplitude of sound.

Demolition means any dismantling, destructing, razing or removal of structures, utilities, public or private thoroughfare surfaces, or similar property.

Device means a mechanism which is intended to produce or which actually produces noise when operated or handled.

Emergency means any occurrence or circumstance involving actual or imminent physical death or trauma or property damage, demanding immediate emergency work or service. It shall be the burden of the alleged violator to prove the "emergency".

Emergency vehicle means a motor vehicle, boat or aircraft used in response to an emergency. Such vehicles include, but are not limited to, police vehicles, fire and rescue vehicles, and ambulances.

Fluctuating noise means the sound pressure level of noise varying more than six dB(A) during the period of observation when measured with the slow meter characteristic of a sound level meter. It does not equal the previously existing ambient noise level more than once during the period of observation.

Impulsive sound means a sound of short duration, usually less than one second and of high intensity, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts, the barking of dogs, and the beating of drums.

Industrial use means uses allowed under the zoning designation I-1 or I-2.

Level, day-night (Ldn) means a 24-hour average of the A-weighted sound pressure level, with the levels during the period of 10:00 p.m. to 7:00 a.m. increased by ten dB(A) before averaging.

Motor vehicle means any vehicle defined as a motor vehicle by F.S. § 320.01(1), including but not limited to, passenger cars, trucks, truck trailers, semitrailers, campers, motorcycles, minibikes, go-carts, amphibious craft on land, dune buggies, and racing vehicles which are propelled by mechanical power.

Motorboat means any vehicle which is primarily operated on water or which does operate on water, such as boats, barges, amphibious craft, or hover craft, and which is propelled by mechanical power.

Muffler means any apparatus consisting of baffles, chambers, or acoustical absorbing material whose primary purpose is to transmit liquids or gases while causing a reduction in sound emission at one end.

Multifamily residential dwelling means a building designed or used exclusively for residential occupancy by two or more families.

Multifamily residential dwelling unit means the portion of a multifamily residential dwelling designed or used exclusively for residential occupancy by only one family.

Noise means any sound produced in such quantity and for such duration that it annoys, disturbs, endangers or injures the comfort, repose, health, peace, or safety of a reasonably prudent person of ordinary sensibilities, and also includes sounds at or above decibel levels as specifically prohibited by this article.

Noise-sensitive zone means a quiet zone which is open or in session, and which is demarcated by conspicuous signs identifying it as a quiet zone. Noise-sensitive zones may be established only for schools, public libraries, churches, hospitals, and nursing homes. These zones are to be established as approved by the city commission.

Office use means uses allowed under the zoning designation C-3.

Period of observation means the time interval during which acoustical data and facts are obtained.

Person means any natural person, individual, association, partnership, corporation, municipality, governmental agency, business trust, estate, trust, two or more persons having a joint or common interest or any other legal entity and includes any officer, employee, department, agency or instrumentality of the United States, a state or any political subdivision of a state or any other entity whatsoever or any combination of such, jointly or severally.

Police department means the city police department and each officer thereof.

Powered model vehicles means any powered vehicles, either airborne, waterborne or landborne, which are designed not to carry persons or property, such as, but not limited to, model airplanes, boats, cars, rockets, and which are being propelled by mechanical means.

Property line means an imaginary line along the surface of land or water, and its vertical plane extension, which separates the real property owned, rented or leased by one person from the real property owned, rented or leased by another person.

Public right-of-way means any street, avenue, boulevard, highway, sidewalk, alley, or similar place normally accessible to the public which is owned or controlled by the city, county, state or federal government.

Pure tone means any sound which can be distinctly heard as a single pitch or a set of single pitches. For the purposes of measurement, 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 dB for center frequencies of 500 Hz and above and by eight dB for center frequencies between 160 and 400 Hz and by 15 dB for center frequencies less than or equal to 125 Hz.

Receiving land use means the use of the land which is receiving the sound or noise as designated by the City of Winter Garden Zoning Map (and for recently incorporated areas, the effective zoning category).

Residential use means uses allowed under a zoning designation of R-1A, R-1, R-2, R-3, R-NC, and planned unit development.

RMS sound pressure means the square root of the time averaged square of the sound pressure.

Single-family residential dwelling means a detached dwelling containing complete housekeeping facilities for only one family, designed for or occupied exclusively by one family for usual domestic purposes, and having no enclosed space or cooking facilities or sanitary facilities in common with any other dwelling.

Single-family residential dwelling lot means the parcel of land upon which a single-family residential dwelling is located.

Sound means an oscillation in pressure, stress, particle displacement, particle velocity or other physical parameter, in a medium with internal forces. The description of sound may include any characteristic of such sound, including duration, intensity, and frequency.

Sound level means the weighted sound pressure level obtained by the use of a metering characteristic and weighting A, B, or C as specified in American National Standards Institute specifications for sound level meters (ANSI S1.4-1971), or successor publications. If the weighting employed is not indicated, the A-weighting shall apply.

Sound level meter means an instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter, and weighting network used to measure sound pressure levels. The output meter reads sound pressure level when properly calibrated. The instrument is of type 2 or better, as specified in the American National Standards Institute publication entitled "Specifications for Sound-Level Meters," designated as ANSI S1.4-1971, or successor publication.

Sound pressure means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by the presence of sound energy.

Sound pressure level means 20 times the logarithm to the base 10 of the ratio of the RMS sound pressure to the reference pressure of 20 micronewtons per meter squared. The sound pressure level is denoted L_p or SPL and is expressed in decibels.

Steady noise means a sound pressure level which remains essentially constant during the period of observation, i.e., the fluctuations are too small to meet the criteria for fluctuating noise.

(Code 1988, § 11-50; Ord. No. 05-36, § 3, 7-14-05; Ord. No. 12-28, § III 6-14-12; Ord. No. 12-33, § I, 6-28-12)
Cross reference— Definitions generally, § 1-2.

Sec. 38-154. Findings of fact.

- (a) Excessive and unnecessary noise interferes with the quality of life and the health, safety and general welfare of the public.
- (b) In particular, excessive and unnecessary noise can and does cause adverse psychological and physiological effects in humans, inefficiency, accidents and other undesirable and dangerous conditions.
- (c) A substantial body of science and technology exists by which noise may be measured and substantially abated.

(Code 1988, § 11-51)

Sec. 38-155. Prohibited acts.

- (a) It shall be unlawful for any person to produce, cause to be produced, allow to be produced or project, by any means, any sound or noise across a property line in such manner as to create a sound level which exceeds the limits set forth for the receiving land use listed in section 38-156 when measured at or within the property line of the receiving property. For any activity or use of land or buildings not expressly listed in the zoning districts in the city, the city commission, upon notice to the owner or occupant of the property producing sound, may determine the category of use under this article for which the activity or use is to be considered. Notwithstanding the foregoing, the existence of a noise which relates to the receiving land use listed in section 38-156 may be determined by the city's law enforcement officers, code enforcement officers, code inspectors, and/or their agents pursuant to section 38-160(a)(1).
- (b) Notwithstanding any violation of subsection (a) above, the following specific uses, activities and circumstances are declared to be in violation of this article:
 - (1) *Radios, television sets, exterior loudspeakers, musical instruments, and similar devices.* Operating or permitting the use or operation of any radio receiving set, exterior loudspeaker, amplified sound equipment, musical instrument, phonograph, television set, or other machine or device for the production or reproduction of sound in such a manner as to create a noise across the boundary of the property, including, without limitation, public and private rights-of-way from which the noise originates. In addition to the preceding, radios, cassette players, disk players and similar devices associated with motor vehicles or motorboats, shall not be operated or amplified in such a manner as to be felt or clearly heard at 25 feet or more from such device, when operated or parked on a public or private right-of-way or public or private space. In determining whether such devices may be clearly heard, the city's law enforcement officers, code enforcement officers, code inspectors, and/or their agents must utilize their normal auditory senses without any enhancements or hearing aids. Particular words or phrases or the name of any song or artist are not required to be identified. The detection of a rhythmic bass reverberating sound shall be sufficient to determine if a violation has occurred. To the extent that the Florida Uniform Traffic Control Law provisions regulate noise originating from within public or private rights of way, those provisions shall apply where currently existing or as amended.
 - (2) *Construction equipment and activity.* Operating or causing to be operated any equipment or performing any outside activity in furtherance of construction, repair, alteration or demolition work on buildings, structures, roads, or projects within the city except between the hours of 7:00 a.m. and 9:00 p.m. Monday through Friday and

- between the hours of 9:00 a.m. and 9:00 p.m. on Saturday, excluding all legal, state, and nationally recognized holidays. A variance may be obtained as set forth in this article from the city for such construction or repair work outside of such hours.
- (3) *Engine mufflers.* Operation of any internal combustion engine, including but not limited to an engine associated with a motor boat, or motor vehicle without a muffler or other effective sound-dampening device which functions as designed by the manufacturer muffler or other effective sound-dampening device, which prevents loud or explosive noise therefrom.
 - (4) *Motor vehicle, motorcycle or motorboat repair in residential areas.* Repairing, rebuilding, modifying or testing any motor vehicle, off-road vehicle, or motorboat within or abutting any residential land use designation in such a manner as to create noise across the boundary of the property, including without limitation, public and private rights-of-way from which the noise originated between the hours of 9:00 p.m. and 7:00 a.m.
 - (5) *Activities in the vicinity of schools, courts, churches, and hospitals.* Creating sound on any street adjacent to any school, court, church, or hospital which sound constitutes a noise as perceived from the interior of such institution.
 - (6) *Peddlers, hawkers, or vendors.* It shall be unlawful for peddlers, hawkers, or vendors to shout or cry along or on a roadway in such a manner as to create noise on property outside the right-of-way.
 - (7) *Drums, cymbals, and amplified sound equipment.* Creating, making, or maintaining any sound by the use of any drum, cymbals, amplified sound equipment, or other similar instruments in the city for the purpose of attracting attention to any performance, show, sale, or display of merchandise, or place of business so that a noise is projected across the boundary of the property from which the noise originates.
 - (8) *Bells or sirens on vehicles.* Using, in connection with an unauthorized vehicle, any bell or siren similar to that used on ambulances or vehicles of the police, fire departments, and other public safety agencies.
 - (9) *Skateboard ramps.* Using any skateboard ramp or similar configuration for skateboarding or rollerblading between 9:00 p.m. and 7:00 a.m. in a residential land use designation in a manner that results in noise across the boundary of the property from which the noise originates.
 - (10) *Air blow or vacuum cleaners.* Operating any air-blow or vacuum cleaning equipment or similar devices for the cleaning of parking lots, walkways, driveways, or similar areas between the hours of 9:00 p.m. and 7:00 a.m. that results in noise across the boundary of the property from which the noise originates.
 - (11) *Places of public entertainment.* It shall be unlawful for any public entertainment establishment or person associated with or working for said establishment to operate, play or permit the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to create a noise across the boundary of the property from which the noise originates.
 - (12) *Landscape maintenance.* Undertaking landscape maintenance activities in such a manner as to create noise across the boundary of the property from which the noise originates between the hours of 9:00 p.m. and 7:00 a.m. Golf courses engaged in the regular maintenance of greens, fairways, practice areas, etc. are exempt from this provision.

- (13) *Powered model vehicles.* Operating or permitting the operation of powered model vehicles in such a manner as to create noise across the boundary of the property from which the noise originates between the hours of 9:00 p.m. and 7:00 a.m.
- (14) *Animal noises.* It shall be unlawful for the owner or custodian of any animal to permit such animal to habitually bark, whine, howl, squawk, screech, bray, crow or cause any other noise which constitutes a noise experienced across the boundary of the property from which the noise originates.
- (15) *Loading docks.* It shall be unlawful for any commercial or industrial establishment to engage in any loading or unloading of equipment or merchandise from a vehicle between the hours of 9:00 p.m. and 7:00 a.m. where such activity results in a noise being generated across the boundary of the property from which the noise originates onto property occupied for residential purposes.
- (16) *Activities within the vicinity of sleeping quarters.* Actions or activities between the hours of 11:00 p.m. and 7:00 a.m. resulting in transmission of a sound across the boundary line of the property where the actions or activities occurs such that the sound constitutes a noise as perceived from within the interior of a building used for residential or lodging purposes.

(Code 1988, § 11-47; Ord. No. 05-36, § 4, 7-14-05; Ord. No. 12-33, § II, 6-28-12; Ord. No. 13-18, § I, 4-11-13)

Sec. 38-156. Maximum permissible sound level limits.

- (a) The following applicable sound level limits are established for the following applicable times when measured at or within the property lines of the following applicable receiving land use categories:

Receiving Land Use Designation	Time	Sound Level Limit (dBA)
Single-family residential dwelling lot, parcel, or area; any other lot, parcel or area zoned for residential use except a multifamily residential dwelling unit; any noise-sensitive zone	7:00 a.m.–9:00 p.m.	60
	9:00 p.m.–7:00 a.m.	55
Multifamily residential dwelling unit	7:00 a.m.–9:00 p.m.	55
	9:00 p.m.–7:00 a.m.	45
Lot, parcel or area zoned for office use	7:00 a.m.–9:00 p.m.	75
	9:00 p.m.–7:00 a.m.	70
Commercial other than office use	7:00 a.m.–9:00 p.m.	75
	9:00 p.m.–7:00 a.m.	70
Industrial	7:00 a.m.–9:00 p.m.	75
	9:00 p.m.–7:00 a.m.	70
Agricultural	7:00 a.m.–9:00 p.m.	75
	9:00 p.m.–7:00 a.m.	70

- (b) Any source of sound which emits a pure tone or is characterized as an impulsive sound will reduce by five dBA the sound level limits set forth in subsection (a) of this section.
- (c) To the extent other sections of this article allow sounds at levels that exceed the sound level limits and times specified in the above chart, the other sections of this article control.

(Code 1988, § 11-52; Ord. No. 05-36, § 5, 7-14-05; Ord. No. 12-33, § III, 6-28-12)

Sec. 38-157. Sound measurement.

Except as may otherwise be provided in section 38-155(b), sound measurements taken under this article shall be made with a sound level meter. Recorded measurement shall be taken so as to secure and ensure an accurate representation of the sound. All periods of observation made hereunder shall be determined with regard to the character of the noise being measured and the particular instrument used to make the measurement.

(Code 1988, § 11-53; Ord. No. 05-36, § 6, 7-14-05)

Sec. 38-158. Exceptions.

- (a) The following noise and sounds are exempt from this article:
- (1) Noise and sounds caused by or related to emergency vehicles, equipment, and personnel during emergencies, which shall be deemed to include all work made necessary by an emergency to restore property to a safe condition, all work made necessary by an emergency to restore public utility service and all work made necessary by an emergency to protect persons or property from imminent injury, death, or substantial harm.
 - (2) Noise and sounds produced by city, county, state, and federal government vehicles, equipment and personnel during the pursuit of official duties of the respective governments, including but not limited to public works construction and maintenance, authorized safety signals, warning devices and emergency testing.
 - (3) Noise and sounds produced by public utility vehicles, equipment and personnel during the pursuit of the public duty of such public utility.
 - (4) Noise and sounds produced by activities or events approved by the city commission where the person responsible for such activities or events obtains the city commission's approval after such person clearly and expressly has advised the city commission that the noise or sounds associated with the activities or events would be in violation of this article but for this exemption.
 - (5) Noise and sounds produced between the hours of 7:00 a.m. and 9:00 p.m. by the mowing of grass; the operation of other yard maintenance equipment; the construction of properly permitted buildings, structures and other improvements; and the operation of farm equipment during farming activities.
 - (6) Railway locomotives and railway cars.
 - (7) Aircraft and airport activity conducted in accordance with federal laws and regulations.
 - (8) Motor vehicles operating on a public right-of-way subject to F.S. § 316.293 or other provisions of the Florida Uniform Traffic Control Law that regulate noise and sounds originating from within public or private right-of-way where currently existing or as amended.
 - (9) Organized athletic contests.
 - (10) Noise and sounds produced from churches between the hours of 7:00 a.m. and 10:00 p.m.
 - (11) Community events, such as fairs, school activities, community festivals and the like which do not extend their activities beyond 11:00 p.m. or commence before 7:00 a.m. Any community activity which extends beyond 11:00 p.m. or commences before 7:00 a.m. and would otherwise violate this article must apply for and receive prior approval from the city.
 - (12) Noise and sounds produced by an electrical generator during a time period in which regular electrical utility service is temporarily unavailable to the property upon which

the generator is located.

- (13) Noise and sound associated with uses or activities for which a variance has been obtained from the city approving such noises and sounds contrary to the restrictions of this article.
- (b) To the extent any portion of this article covers a matter covered by F.S. § 403.415, the Florida Motor Vehicle Noise Prevention and Control Act of 1974, or any other provisions of the Florida Uniform Traffic Control Law, the provisions of this article covered by such act or law shall be of no effect. For matters not covered by the act or law, all of the sections of this article are in full force and effect. Additionally, any violation of such act within the city shall be a violation of this article, and such violation may be penalized and such act may be enforced through the enforcement provisions of this article and this Code.

(Code 1988, § 11-54; Ord. No. 05-36, § 7, 7-14-05; Ord. No. 13-18, § II, 4-11-13)

Sec. 38-159. Conflicts in restrictive standard.

If this article and section 118-1339 provide for different maximum noise levels, the more restrictive maximum level shall apply. If the noise levels (maximum sound pressure level) in section 118-1339 cannot be enforced or measurement of such levels is difficult, unduly burdensome or impossible, the sound level limits in this article shall control.

(Code 1988, § 11-55)

Sec. 38-160. Enforcement.

- (a) *Determination of violations.* The city's law enforcement officers, the city manager, code enforcement officers, code inspectors, and their agents are empowered to investigate any situation where a person is alleged to be violating section 38-155, section 38-156 or the terms of any variance. These individuals shall have authority to issue citations for all violations of this article. If any of these individuals encounters a circumstance which reasonably indicates that a person is violating a provision of section 38-155 or 38-156, the following standards shall apply depending upon the provision alleged to have been violated:
- (1) *Violations of section 38-155(a).* If a violation of section 38-155(a) is alleged, a sound level pressure test may be utilized to establish the violation. The city may, through agreement with other local governments or other entities, provide for the measurement of sound and noise and for the performance of sound level pressure tests and other matters as such may be used in the enforcement of this article and the enforcement of section 118-1339. Additionally, the city's law enforcement officers, the city manager, code enforcement officers, code inspectors, and/or their agents, may assess whether a particular sound constitutes a noise as to the receiving land use listed in section 38-156. In assessing whether a noise has been or is continuing to be created, the investigating agent shall investigate the matter and be entitled to rely on his or her observations, witness statements, and any other evidence available. In determining whether a sound constitutes a noise, the investigating agent shall objectively evaluate the alleged noise by considering several environmental and contextual factors, including, but not limited to, the criteria set forth in section 38-160(a)(2)(i)—(ix), inclusive.
- (2) *Violations of section 38-155(b).* If a violation of section 38-155(b) is alleged, then the city's law enforcement officers, the city manager, code enforcement officers, code inspectors, and/or their agents, in assessing whether a noise has been or is continuing to be created shall investigate the matter and be entitled to rely on their

observations, witness statements, and any other evidence available. In determining whether a sound constitutes a noise, the investigating agent shall objectively evaluate the alleged noise by considering several environmental and contextual factors, including, but not limited to, the following:

- (i) The intensity of the alleged noise.
 - (ii) The duration of the alleged noise.
 - (iii) The relationship of the alleged noise to the intensity of background or ambient sounds, if any.
 - (iv) The uses permitted within the zoning district in which the alleged noise emanates or emanated and the uses permitted within zoning districts that lie within 500 feet of the source of the alleged noise.
 - (v) The time of the day or night at which the alleged noise occurs.
 - (vi) The proximity of the alleged noise to facilities customarily utilized for sleeping purposes.
 - (vii) Whether the alleged noise is continuous or impulsive.
 - (viii) The existence of additional complaints concerning the alleged noise from additional persons who claim to be affected by the alleged noise.
 - (ix) Whether the alleged noise is due to natural occurrences or human-made activities.
- (b) *Enforcement.* In the event that a violation of this article has occurred or is occurring, the city shall have the right to one or more of the following remedies or actions:
- (1) *Code enforcement proceedings.* The city may initiate a code enforcement proceeding against the person(s) or entities in violation and/or the property owner of the real property where the violation occurs. A violation of this article may be prosecuted as a violation of an itinerant or transient nature and one that is irreparable and irreversible.
 - (2) *Civil citation.* A civil citation may be issued against the person(s) or entities in violation as set forth in chapter 2 of the Winter Garden Code of Ordinances. The city's law enforcement officers or code enforcement officers are authorized to issue notices to appear to the violator(s).
 - (3) *Criminal penalty.* The city may prosecute the violator for a criminal misdemeanor punishable by a fine not exceeding \$500.00 or imprisonment for a term not exceeding 60 days, or by both such fine and imprisonment in the discretion of the court.
 - (4) *Other remedies.* The city may institute any appropriate action at law or in equity to bring about compliance or remedy, including but not limited to, instituting an action in court to enjoin violating actions, in which case the violating person(s) or entity shall be liable to the city for reimbursement of the city's attorneys' fees and costs concerning such action.

(Code 1988 § 11-56 Ord. No. 05-36. § 8. 7-14-05. Ord. No. 12-33. § IV. 6-28-12)

Sec. 38-161. Penalty.

A violation of section 38-155 or 38-156, or the terms of any variance granted pursuant to section 38-165 shall be classified as class 2 violations under division 3, article II, chapter 2, part II of this Code. Otherwise, penalties for a violation of section 38-155 or 38-156 are as set forth in section 38-160. A violation of the terms of any variance granted pursuant to section 38-165 shall be subject to the enforcement procedures provided set forth in chapter 2 of the Winter Garden Code of Ordinances pertaining to code violations.

(Code 1988. § 11-57; Ord. No. 05-36. § 9. 7-14-05; Ord. No. 12-33. § IV. 6-28-12)

Sec. 38-162. Other remedies.

The city commission or any substantially affected person may bring suit in the circuit court of the county to restrain, enjoin, or otherwise prevent the violation of this article. Nothing contained in this article shall prevent or restrict the city from taking such other lawful actions in any court of competent jurisdiction as is necessary to prevent or remedy any violation or situation of noncompliance. Such other lawful actions may include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. All remedies and penalties provided for in this article shall be cumulative and independently available.

(Code 1988. § 11-58; Ord. No. 05-36. § 10. 7-14-05)

Sec. 38-163. Liability of enforcement officer.

The police department, the environmental protection officer, the city and their agents are immune from prosecution, civil or criminal, for reasonable, good faith trespass upon private property while in the discharge of duties under this article.

(Code 1988. § 11-59)

Sec. 38-164. Administration.

The city commission may adopt such ordinances as are necessary to effectively administer this article.

(Code 1988. § 11-60; Ord. No. 05-36, § 11. 7-14-05)

Cross reference— Administration. ch. 2.

Sec. 38-165. Variances.

- (a) *Administrative variances:*
 - (1) The community development director may grant a variance from section 38-155 or 38-156
 - (2) Any person seeking a variance shall submit an application to the community development director for the city containing information which demonstrates that bringing the sound for which the variance is sought into compliance with this article would constitute an unreasonable hardship on the applicant, the community, or on other persons. At a minimum, the applicant shall provide the following information:
 - a. Identification of the applicant;
 - b. The applicant's mailing address;
 - c. A legal description of the property from which the sound will emanate;
 - d. A description of the source of the sound;
 - e. A description of the sound;
 - f. The names and addresses of all property owners within 300 feet of the property for which the variance is requested;
 - g. The facts and reasons justifying a variance; and
 - h. Any other relevant information necessary to make a determination.
 - (3) The applicant for a variance shall pay an application fee of \$75.00.

- (4) The community development director for the city shall schedule a public hearing on the variance application in accordance with the procedures set forth in section 118-133
 - (5) At the hearing, the applicant for a variance, any department of the city and persons objecting to the variance application may submit any relevant evidence or testimony. In deciding whether to grant, grant with conditions, or deny the application, the community development director shall balance the hardship which will result to the applicant, the community, and other persons if the variance is not granted. If the community development director determines that the granting of the variance, with or without conditions, will be in harmony with the general intent, purposes and goals of chapter 118 and that the variance will not be unduly injurious to the area involved or otherwise unduly detrimental to the public, the variance shall be granted. Additionally, if the reasonable use of property is not feasible without the granting of a variance, the minimum variance to make the property reasonably useable shall be granted. The community development director shall grant, deny or grant with conditions the variance application no later than ten days after the date of the hearing. In granting, granting with conditions or denying a variance application, the community development director shall state in writing the reasons for the decision. If the decision is to grant or grant with conditions the application, the community development director shall set forth in writing the terms and conditions of the variance, including the effective date of the variance, the period of the variance, the time of day the variance may be used, the location where the sound may be created or caused, and the sound level limits. The reasons for a denial shall be set forth in writing.
 - (6) If the community development director grants the variance application, a written variance shall be issued to the applicant and a copy of the variance shall be provided to those persons and entities requiring a copy. However, the variance shall not be issued until the time for filing a notice of appeal pursuant to subsection (a)(9) of this section has expired. If a notice of appeal is filed, the variance shall not be issued unless the city commission approves a variance.
 - (7) The variance shall contain all the terms and conditions of the variance. A copy of the variance shall be retained by the community development director. This copy shall be available for inspection upon request by the general public.
 - (8) The failure to comply with any term or condition of the variance constitutes a violation of this article and is punishable in the manner provided in sections 38-161 and 38-162 of this article.
 - (9) Any variance applicant, abutting property owner, or adversely affected property owner or occupant may appeal a decision of the community development director in the manner proscribed in section 98-31. The city commission shall conduct a de novo review in deciding whether to approve or disapprove the community development director's decision and in granting, denying or granting with conditions a variance.
- (b) *Administrative variances for construction activity:*
- (1) Notwithstanding the provisions set forth in section 38-155(b)(2) above, any person may apply to the city on form(s) approved by the city to allow for construction activities to occur outside of the days and times referenced in section 38-155(b)(2) above provided that each of the following conditions have been met:
 - a. Applicant provides city with 72-hour written notice prior to commencement of construction activity;
 - b. City staff is available to inspect and review construction activity on the days

- and at the times requested for construction; and
- c. Applicant pays all fees, costs and expenses incurred or to be incurred by city as well as any overtime incurred by city staff for such inspections and review of construction activity.
- (2) If the conditions enumerated under section 38-165(b)(1) have been met, the city may permit the applicant to perform the following construction activities on the specified days and at the specified times:
- a. Horizontal construction may be permitted to occur no later than 9:00 p.m. horizontal construction includes site work such as clearing, grading, paving, drainage, utilities, sidewalks, curbs, gutters, base work, street lighting, electrical, landscaping and other subdivision and nonresidential site improvements or work.
 - b. Vertical construction may be permitted to occur 24 hours a day any day of the week subject to prohibition by the city, in the city's sole discretion, if any part of the vertical construction causes, or is likely to cause noise. Vertical construction includes footings, forms, steel, electrical, plumbing, roofing, HVAC, concrete, painting, sheetrock, and other activities that are not horizontal construction.
- (c) *Exemptions for pre-approved city events or activities:*
- (1) It shall not be a violation of section 38-155(a) or section 38-155(b) if the noise at issue relates to or is produced as a result of pre-approved city events or activities. Such exemptions include, but are not limited to, activities and events sponsored by, conducted by, or permitted by the city.

(Code 1988, § 11-61; Ord. No. 05-36, § 12, 7-14-05; Ord. No. 12-33, § VI, 6-28-12)

Sec. 38-166. Reserved.

Editor's note—

Ord. No. 12-33, § VII, adopted June 28, 2012, repealed § 38-166, which pertained to permit required for sound trucks and sound amplifying devices and derived from § 3-7 of the 1988 Code.

Secs. 38-167—38-199. Reserved.

FOOTNOTE(S):

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Cross reference— Use of loudspeakers or sound equipment at adult entertainment establishments, § 10-103; performance standards for noise, § 118-1339. [\(Back\)](#)