

TAB 3



City of Palmetto Agenda Item

Meeting Date

February 22, 2011

Presenter: **Mark P. Barnebey, Esq.**

Department: **City Attorney**

Title: Noise Exception Permit

Background: The City noise ordinance allows the approval of a noise exception permit for a one time exception to the noise ordinance contained in Chapter 5 of the Palmetto Code of Ordinances. Issues have been raised regarding the extent of a noise exception permit which allows unlimited noise for a certain period of time. Recently, the City Commission has discussed limiting the nature of noise exception permits such that after one complaint, a second complaint would essentially terminate the permit.

Discussion:

Without a noise exception permit, the City Police Department would warn a potential violator after a complaint and then, if the violation continued, it would take action to shut the offending noise down. If the Commission wishes to readdress how it approaches noise exception permits, it is important to have standards which are enforceable by the Police Department, such as time and location. One method is by possibly considering decibel levels in setting standards and allowing a higher standard for a noise exception permit. Decibel levels, which the City does not currently use as a standard for noise measurement, can be difficult to enforce without proper training and equipment. This is likely why the City departed from a decibel level standard a few years ago.

Options appear as follows:

1. Eliminate the noise exception permit.
2. Limit to when and where noise exception permits may be granted. Some jurisdictions limit them to public and non-profit sponsored events or to specific locations where the impacts are minimized.
3. Limit the time to no more than a few hours and no later than 10 p.m. Some jurisdictions have done this to limit the impact on surrounding properties.
4. Place a 6 month moratorium on the issuance of noise exception permits to evaluate the impact of possible long term elimination or modification of the requirements.
5. Continue issuance of permits on a case-by-case review. If this occurs, further delineation of the criteria for issuance is recommended.

Certainly, some of the options may be done in combination. The City Noise Ordinance is attached, as are some noise exception permit ordinances from some other jurisdictions.

It is the City Attorney's recommendation to either do a combination of Option 2 and 3 or Option 4 based on prior discussion by the Commission.

Budgeted Amount:	\$0.00	Budget Page No(s):		Available Amount:	\$0.00	Expenditure Amount:	\$0.00
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Additional Budgetary Information:

Funding Source(s):	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Sufficient Funds Available:	<input type="checkbox"/> Yes <input type="checkbox"/> No	Budget Amendment Required:	<input type="checkbox"/> Yes <input type="checkbox"/> No	Source:	
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City Attorney Reviewed:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Advisory Board Recommendation:	<input type="checkbox"/> For <input type="checkbox"/> Against <input type="checkbox"/> N/A	Consistent With:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
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Potential Motion/ Direction Requested:

Direction is requested as to how to proceed.

Staff Contact:

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Chapter 5

AMUSEMENTS*

- Art. I.** In General, §§ 5-1—5-25
Art. II. Dances and Dance Halls, §§ 5-26—5-45
Art. III. Poolrooms, Billiard Halls, §§ 5-46, 5-47

ARTICLE I. IN GENERAL†

Sec. 5-1. Findings of fact.

The foregoing recitation of facts is incorporated herein as the basis and necessity for the city council's enactment of this legislation.

(Ord. No. 602, § I, 9-9-97)

Sec. 5-2. Purpose and intent.

It is the purpose and intent of this article to control, regulate and prevent the generation, making, emitting, creating or allowing noise disturbances within the city in order to protect the public health, comfort, safety and welfare.

(Ord. No. 602, § II, 9-9-97; Ord. No. 05-845, § 2, 4-4-05)

Sec. 5-3. Definitions.

Authorized emergency vehicle means vehicles of the fire department, police vehicles, and such ambulances and emergency vehicles of municipal departments, private public service corporations, and the department of transportation as are designated or authorized by the department or the chief of police of an incorporated city or any sheriff of any of the various counties.

Disturbance means actual or imminent interference with the peace or good order.

Motor vehicle means any vehicle which is self-propelled.

Motorcycle means any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor.

Noise means any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans. "Noise" includes low frequency vibrations, such as caused by amplification of bass instrumental sounds.

***Cross references**—Administration, Ch. 2; licenses and business regulations, Ch. 19.

†**Editor's note**—Ord. No. 602, §§ I—IX, adopted September 9, 1997, amended the Code by repealing former § 5-1, renumbering former § 5-2 as new § 5-9, and adding new §§ 5-1—5-8. Former § 5-1 pertained to noise restrictions, and derived from the Code of 1975, § 5-1.

Noise disturbance means sound, or the vibration associated therewith, which:

- (1) Is or may be harmful or injurious to the health or welfare of a reasonable person with normal sensitivities;
- (2) Unreasonably interferes with the enjoyment or normal conduct of life, property or outdoor recreation; or
- (3) Causes noise pollution, defined as follows:

"Noise pollution" shall mean the presence of noise in excessive or unnecessary amount or of such duration, wave frequency or intensity as to be injurious to human or animal life or property; or which unreasonably interferes with the comfortable enjoyment or normal activities of life or property, or other conduct of business.

Sound means temporal or spacial oscillation in pressure, or other physical quantity in a medium with internal forces causing compression and rarefaction of that medium, and propagating at finite speed to distant points.

(Ord. No. 602, § III, 9-9-97; Ord. No. 05-845, § 3, 4-4-05)

Sec. 5-4. Prohibited acts.

(a) *Noise disturbance.* The willful generation, making, emitting, creating, allowing, continuing, causing or projecting of any noise disturbance by any person within the municipal boundary of the city is hereby prohibited and unlawful, unless specifically the subject of an exemption or special permit pursuant to this article. It shall be unlawful for any person to willfully generate, make, emit, create, allow, continue, project or cause to be made or continued, any noise disturbance within the city, including, but not limited to, any public streets, public parks, public buildings, schools, upon the grounds of any public building or public land, in any public parking lots, any residentially zoned district or any residential dwelling or the immediately surrounding yard or grounds of any residence.

(b) *Standards.* The standards to be considered in determining whether a violation of subsection (a) of this section exists may include but shall not be limited to the following:

- (1) The volume of the noise.
- (2) The intensity of the noise.
- (3) Whether the nature of the noise is usual or unusual.
- (4) The volume and intensity of the background noise, if any.
- (5) The proximity of the noise to residential sleeping facilities.
- (6) The nature and zoning of the area from which the noise emanates.
- (7) The nature and zoning of the receiving land.
- (8) The time of the day or night the noise occurs.
- (9) The duration of the noise.

(10) Whether the noise is produced by a commercial or noncommercial activity.

(11) The day of the week the noise occurs.

(Ord. No. 602, § I, 9-9-97; Ord. No. 05-845, § 4, 4-4-05)

Sec. 5-5. Public nuisances.

The generation, making, emitting, creating, continuing, causing or allowing of any noise disturbance which tends to annoy the community or is injurious to the public health, safety and welfare and may or tends to cause injury to the physical health, emotional well being and mental stability of surrounding residents, citizens or persons in general or tends to damage or have an unreasonable adverse impact upon personal or real property is hereby declared to be a public nuisance. It is the policy of the city that all public nuisances of this nature be abated by enforcement of this article or by utilization of the abatement process available pursuant to state law.

(Ord. No. 602, § V, 9-9-97; Ord. No. 05-845, § 5, 4-4-05)

Sec. 5-6. Exemptions.

The following acts or activities are exempt from the provisions of this article.

- (1) Musical chimes or sounding bells emanating from a public or religious institution or facility, provided the sound is less than five (5) minutes in duration and occurs not more than four (4) times within a one-hour period.
- (2) Sound emanating from an authorized emergency vehicle while responding to an emergency or acting within the line of duty.
- (3) Sound emanating from aircraft or rail transportation equipment which is regulated by state and federal authorities.
- (4) Sound associated with or created by an active project of construction, repair, remodeling, demolition or grading of any real property, provided such activities do not take place before 7:00 a.m. on Monday through Friday, before 8:00 a.m. on Saturday, before 9:00 a.m. on Sunday, or after 10:00 p.m. on any day.
- (5) Sound emanating from any burglar alarm or security device on any building, dwelling, structure, motor vehicle or other use, provided such sound terminates within thirty (30) minutes of its activation.
- (6) Sound emanating from an activity, device, apparatus, instrument or use which has been granted a special permit for such sound.
- (7) Sound emanating or resulting as a collateral matter from an immediate bona fide emergency situation or occurrence, but only for the duration of such emergency.

(Ord. No. 602, § VI, 9-9-97; Ord. No. 642, § I, 5-3-99; Ord. No. 05-858, § 2, 6-20-05)

Sec. 5-7. Special permits exceptions.

The use of loudspeakers, public address systems or sound systems at athletic stadiums, fields, arenas, courts, tracks, theaters, bandstands, auditoriums, convention centers or similar buildings, structures or areas for public gatherings when involving the presentation of athletic or sporting events, artistic events, rallies, performances, parades, concerts, dances or other similar activities, as part of a community or public event or program; or the performance of construction or demolition activities at times other than those provided in section 5-6(4) above, may be the subject of a special permit exception (SPE) to the provisions of this Code. A person or entity may seek a SPE from the provisions of this Code by application to the city council through filing with the office of the city clerk. An application for a SPE must be made no less than thirty (30) days prior to the date of the event or occurrence for which the special permit is sought. A special permit may only be issued for a specified number of events and for a limited period of time. No "general" or "universal" SPE of an unlimited nature and time shall be authorized. It shall be the duty of the person or entity seeking a SPE to establish by substantial competent evidence that the activity for which a SPE is sought has the means to effectively mitigate potential adverse effects and impacts upon surrounding property owners and residents. In determining whether or not a SPE shall be issued, the city council shall, at a minimum, consider the nature of the event, its possible adverse effects, its importance to the general community and the potential benefit the event may have upon the city and the general public; the size of the event with respect to anticipated public participation or attendance; the time of the event; the proposed effective mitigation mechanisms; and the availability of alternate locations where the event may reasonably be held without creating the type or degree of potential adverse effects anticipated at the site involved for which the SPE is being requested. Review of a denial of a SPE shall be to the circuit court in and for the county and must be filed within thirty (30) days of the date of the decision of the city council relating to the SPE. Review shall be based solely upon the record generated before the city council. (Ord. No. 602, § VII, 9-9-97; Ord. No. 642, § II, 5-3-99)

Sec. 5-8. Enforcement.

This article shall be enforced as provided for by state law, including referral or citation to the city's code enforcement board, issuance of a citation as may be provided for by city ordinance, or the filing of an action in a court of competent jurisdiction to obtain civil remedies, including a restraining order, injunction and damages. Any enumeration of enforcement mechanisms set forth herein is supplemental and not exclusive. (Ord. No. 602, § VIII, 9-9-97; Ord. No. 05-845, § 6, 4-4-05)

Sec. 5-9. Bond, liability insurance for rides.

No person shall conduct, operate, manage or sponsor any Ferris wheel, merry-go-round or other amusement ride operated for hire, or for the purpose of promoting or advertising any trade or business without first filing with the city clerk a bond or certificate of liability insurance in the amount of at least two hundred fifty thousand dollars (\$250,000.00) indemnifying the public against damages sustained by reason of the operation of such ride.

ORDINANCE NO. 960

AN ORDINANCE OF THE CITY OF ARCADIA, FLORIDA,
A MUNICIPAL CORPORATION, RELATED TO NOISE;
AMENDING AND RESTATING ARTICLE III OF
CHAPTER 50 OF THE CODE OF ORDINANCES, CITY OF
ARCADIA, FLORIDA; PROVIDING FOR THE
REGULATION OF NOISE WITHIN THE CITY;
PROVIDING FOR SEVERABILITY; AND PROVIDING
FOR AN EFFECTIVE DATE.

THE CITY OF ARCADIA, FLORIDA, HEREBY ORDAINS as follows:

Section 1. Amendment of the Code of Ordinances. The Code of Ordinances of the City of Arcadia, Florida, is amended to amend and restate in its entirety Article III of Chapter 50 (Environment) to read as follows:

Article III. NOISE

Sec. 50-61. 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) *A band level* means the total sound level of all noise as measured with a sound level meter using the A weighing network. The unit of measurement is the dBA.
- (b) *Daytime* means 7:00 a.m. to 11:00 p.m. in commercial and manufacturing use occupancies and 7:00 a.m. to 10:00 p.m. in residential use occupancies.
- (c) *Decibel* means a unit of level equal to ten times the logarithm (base 10) of the ratio of any two quantities proportional to power.
- (d) *Emergency work* means work made necessary to protect persons or property from exposure to danger.
- (e) *Nighttime* means 11:00 p.m. to 7:00 a.m. in commercial and manufacturing use occupancies and 10:00 p.m. to 7:00 a.m. in residential use occupancies.
- (f) *Noise level* means the sound pressure level as measured in dBA by a sound level meter.
- (g) *Plainly audible* means any sound or noise produced or reproduced by a radio, tape player, television, electronic audio equipment, musical instrument, sound amplifier, or other mechanical or electronic soundmaking device, that can

be clearly heard by a person using his normal hearing faculties, at a distance of 200 feet or more from the real property line of the source of the sound or noise.

(h) *Sound level meter* means an instrument, including a microphone, an amplifier, an output meter, and frequency weighing networks for the measurement of noise and sound levels in a specified manner.

(i) *Sound pressure level* (in decibels) of sound is 20 times the logarithm to the base 10 of the ratio of the pressure of this sound to the reference pressure, which reference pressure must be explicitly stated.

(j) *Time* means the then current legal time in the city.

(k) *Technical definitions* are in accordance with American Standard S1.1-1960 entitled, "Acoustical Terminology."

Sec. 50-62. Classification of use occupancies; projection of noise from use to another.

(a) *Classification.* For purposes of defining the "use occupancy," all premises containing habitually occupied sleeping quarters shall be considered in residential use. All premises containing businesses where sales, professional or other commercial use is legally permitted shall be considered commercial use. All premises where manufacturing is legally permitted shall be considered manufacturing use. In cases of multiple use, the more restrictive use category shall prevail. Hospitals, schools, and church areas are considered residential. Any area not otherwise classified shall conform to commercial standards.

(b) *Projection of noise.* Sound or noise projecting from one use occupancy into another use occupancy with a different noise level shall exceed neither the limits of the use occupancy into which the noise is projected nor the noise limits of the use occupancy from which the noise originates.

Sec. 50-63. Measurement of noise.

(a) The measurement of sound or noise shall be made with a sound level meter meeting the standards prescribed by the American National Standards Institute, S1.4 American National Standard Specifications for Sound Level Meters. The instruments shall be maintained in calibration and good working order. A calibration check shall be made of the system at the time of any noise measurement. Measurements recorded shall be taken so as to provide a proper representation of the noise source. The microphone during measurement shall be positioned so as not to create any unnatural enhancement or diminution of the measured noise. A windscreen for the microphone shall be used at all times.

(b) The slow meter response of the sound level meter shall be used in order to best determine the average amplitude.

(c) The measurement shall be made at any point on the property into which the noise is being transmitted and shall be made at least three feet away from any ground, wall, floor, ceiling, roof and other plane surface, or the closest city public right-of-way, whichever is closer.

(d) In case of multiple occupancy of a property, the measurement may be made at any point inside the premises to which any complainant has right of legal private occupancy; provided, that the measurement shall not be made within three feet of any ground, wall, floor, ceiling, roof or other plane surface, or the closest city public right-of-way, whichever is closer.

(e) All noise measurements provided for in this article will be made by designated officials of the city who are qualified to operate the apparatus used to make the measurements as provided for in this article.

Sec. 50-64. Tables of noise level limits.

(a) Table I.

(1) Table I specifies noise level limits in dBA which if exceeded will have a high probability of producing permanent hearing loss in anyone in the area where the noise levels are being exceeded. No noise shall be permitted within the city which exceeds in duration or noise level that as stated in table I as follows:

TABLE I: Permissible Noise Exposures	
Duration per Day, Continuous Hours	Noise Level dBA
8	90
6	92
4	95
3	97
2	100
1 1/2	102
1	105
1/2	110
1/4 or less	115

(2) When the daily noise exposure is composed of two or more periods of noise exposure at different levels, their combined effect shall be considered, rather than the individual effect of each. If the sum of the following fractions: $C_1/T_1 + C_2/T_2 \dots C_n/T_n$ exceeds unity, the mixed exposure shall be considered to exceed the noise level limit value. C_n indicates the total time of

exposure at a specified noise level, and T_n indicates the total time of exposure permitted at that level.

(3) If the device producing the noise whose noise levels are in excess of Table I cannot be toned down so that the noise levels are less than those in Table I, protection should be provided for those in the area of the noise. The protection must reduce the noise level to below the limits of Table I and must not, itself, produce a safety hazard. Procedures must exist that guarantee that the people in the area of the noise will use the protection.

(b) Table II. Tables IIA and IIB specifies noise levels that represent limits that if exceeded interfere with the peace, quiet and general welfare of the city and its inhabitants. No noise shall be permitted within the city that exceeds the noise level limits of table II except as expressly authorized by this article.

TABLE IIA: Maximum Allowable Noise Level Limits in dBA for Residential Occupancies	
Time of Day	Noise Level dBA
Day (7:00 a.m. to 10:00 p.m.)	61
Night (10:00 p.m. to 7:00 a.m.)	55

TABLE IIB: Maximum Allowable Noise Level Limits in dBA for Commercial and Manufacturing Occupancies	
Time of Day	Noise Level dBA
Day (7:00 a.m. to 11:00 p.m.)	66 (Commercial) 71 (Manufacturing)
Night (11:00 p.m. to 7:00 a.m.)	60 (Commercial) 65 (Manufacturing)

These levels may not be exceeded in any one single incident if the single incident represents a part of the normal operation of the facility.

Sec. 50-65. Motor vehicles.

It shall be a violation of this article to operate a motor vehicle, or combination of vehicles towed by the motor vehicle, that creates a noise or sound that exceeds the noise level limits in Table II except when the vehicles are traveling on public streets, highways, driveways, parking lots, and ways open to vehicle travel. It shall be a violation to operate a motor vehicle in such manner as to exceed the noise level limits of Table III when the vehicle is operating on public streets, highways, driveways, parking lots, and ways open to vehicle travel. Normal operation includes normal acceleration, deceleration, and operation at maximum normal speeds in all gears and ranges up to the speed limits currently effective on those streets of the city over which the vehicles may be operated.

TABLE III: Noise Level Limits for Motor Vehicles	
Type of Vehicle	Noise Level dBA
Trucks and buses	85 dBA measured 50 feet from the source
Passenger cars, motorcycles, and other motor vehicles	79 dBA measured 50 feet from the source

The measurement is made as the vehicle drives past. If the reading is above that listed in Table III at any time, the vehicle is in violation of this article. All distances are measured from the center of the vehicle or center of the driving lane in which the vehicle is being driven.

Sec. 50-66. Exemptions.

The following uses and activities shall be exempt from noise level regulations except as listed in Table I:

- (a) Air conditioners and lawn mowers are exempt from provisions of Table II when the equipment is functioning in accord with the manufacturer's specifications and with all manufacturer's mufflers and noise reducing equipment in use and in proper operating condition.
- (b) Nonamplified crowd noises and music resulting from activities such as football and baseball games, fairs and other events put on by student, governmental or community groups.
- (c) Construction operations for which building permits have been issued, or construction operations not requiring permits due to ownership of the project by an agency of government; providing such equipment is operated in accord with the manufacturer's specifications and with all manufacturer's mufflers and noise reducing equipment in use and in proper operating condition.
- (d) Noises of safety signals, warning devices and emergency pressure relief valves.
- (e) Noises resulting from any authorized emergency vehicle when responding to any emergency call or acting in time of emergency.
- (f) Noises resulting from emergency work.
- (g) Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit has been granted by the city. Regulation of noises emanating from operations under permit shall be according to the conditions and limits stated on the permit.
- (h) Noises made by persons having obtained a permit to use the streets are exempt from Table II.

(i) Any aircraft operated in conformity with or pursuant to federal law, federal air regulations, and air traffic control instruction used pursuant to and within the duly adopted federal air regulations shall be exempt. Any aircraft operating under technical difficulties in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations are also exempt.

(j) All noises coming from the normal operations of railroad trains are exempt from Table II.

Sec. 50-67. Special permits.

(a) Application; conditions for issuance. Applications for a permit for relief from the maximum allowable noise level limits designated in this chapter, except from Table I, may be made in writing. Any permit granted by the city must be in writing and must contain all conditions upon which the permit shall be effective. The city council may grant the relief applied for and may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding neighborhood, including without limitation the use of mufflers, screens, or other sound attenuating devices.

(b) Entertainment related special permits. Permits may be granted for the purpose of entertainment under the following conditions:

(1) The function must be open to the public (admission may be charged).

(2) The permit will be given for only four hours in one 24-hour day, or any reasonable extension, as authorized by the city council.

(3) The function must be staged between the hours of 9:00 a.m. and 12:30 a.m. of the following day.

(4) Functions for which the permits are issued shall be limited to a noise level not to exceed 70 dBA for more than three cumulative minutes out of any continuous 60-minute period.

(c) Non-entertainment related special permits. Special permits for non-entertainment special purposes may be issued after considering the following:

(1) If the special purpose relates to the operation of a trade or business, that the special purpose not be in the ordinary course of that trade or business;

(2) If the special purpose relates to the operation of a trade or business, that the special purpose be necessary to the operation of the applicant's trade or business;

(3) If the special purpose does not relate to the operation of a trade or business, that the special purpose not be an ordinary event in the affairs of the applicant;

(4) If the special purpose does not relate to the operation of a trade or business, that the special purpose be compatible with the ordinary activities of the neighborhood in which the special purpose is to occur;

(5) If the special purpose be a recurring purpose, that it not recur more often than four times each calendar year.

(6) The special purpose relates to the operation of a trade or business located on a property which has been annexed into the city where such special purpose was existing at the time of annexation and was not the subject of any enforcement action pursuant to any noise regulation of DeSoto County immediately prior to the annexation.

(d) Limitations. No permit may be issued to permit the use of any loudspeaker or sound device on the exterior of any building that at any time exceeds the noise level limits in Table II, except those used for emergency warnings.

(e) Special permits for emergency purposes. Notwithstanding any other provision of this section, a special permit may be issued hereunder for any emergency purpose by the city administrator and the mayor (or if the mayor is unavailable, the vice mayor, or if both the mayor and the vice mayor are unavailable by any member of the city council). Any special permit issued for an emergency purpose shall expire at the end of the next city council meeting at which a quorum is present unless acted upon by the city council.

Sec. 50-68. Unnecessary noises prohibited; unnecessary noise standard.

(a) Some sounds may be such that they are not measurable by the sound pressure level meter or may not exceed the limits of Tables I, II, or III, but they may be excessive, unnatural, prolonged, or unusual, and are a detriment to the public health, comfort, convenience, safety, welfare, and prosperity of the residents of the city.

(b) Noise prohibited by this section are unlawful notwithstanding the fact that no violation of sections 50-62-50-66 is involved, and notwithstanding the fact that the activity complained about is exempted in sections 50-62-50-66. Thus, the following acts, among others, are declared to be loud, disturbing and

unnecessary noises in violation of this article; but this enumeration shall not be deemed to be exclusive:

(1) The sounding of any horn or signaling device on any automobile or other vehicle, except as a danger warning; the creation by means of any signaling device of any unreasonably loud or harsh sound; the sounding of any signaling device for any unnecessary and unreasonable period of time; and the unreasonable use of any signaling device.

(2) The using, operating or permitting to be played, used or operated of any radio, television, tape, record or compact disc player, amplifier, musical instrument, or other machine or device used for the production, reproduction or emission of sound; any prolonged sounds made by people; and the keeping of any animal or bird which by causing frequent or long-continued noise in such manner as to disturb the public peace, quiet and comfort of the neighboring inhabitants or at any time with greater intensity than is necessary for convenient hearing for the persons who are in the room, vehicle or chamber in which such sound emitter is operated and who are voluntary listeners to the sound. Quieter standards are expected during nighttime hours.

(c) Any person making a complaint under this section shall be required to sign a sworn complaint either prior to or immediately after an arrest is made, otherwise no such complaint will be honored.

Sec. 50-69. Specific prohibitions.

(a) Noises designated; enforcement. The operation of amplifiers, musical instruments or other mechanical or electronic devices or the use, operation or playing of any radio, tape, record or compact disc player, television, electronic audio equipment, musical instrument, sound amplifier, or other mechanical or electronic soundmaking device that produces or reproduces sound or noise in a manner that is plainly audible at a distance of 200 feet or more away from the real property line or from the vehicle that is the source of the sound or noise is declared to be a violation of this article.

(b) Standards. Any police officer or other official designated by the city administrative assistant who hears a noise or sound that is plainly audible shall measure the noise or sound according to the following standards:

(1) The primary means of detection shall be by means of the official's normal hearing faculties, so long as the official's hearing is not enhanced by any mechanical device, such as a microphone or hearing aid.

(2) The official must have a direct line of sight and hearing to the real property or vehicle that is the source of the sound or noise so that the official can readily identify the offending source of the sound or noise and the distance involved.

(3) The official need not recognize the particular words or phrases being produced or the name of any song or artist producing the noise or sound. The detection of a rhythmic bass reverberating type of noise or sound is sufficient to constitute a plainly audible noise or sound.

(c) Enforcement procedures and enforcement. The following procedures shall be followed by the designated official when enforcing this article:

(1) The designated official shall investigate and determine if any noise or sound is in violation of the specific noise prohibitions provided in this article.

(2) If a noise level is found to be in violation of this section, the designated official shall give a warning to the person responsible for the plainly audible sound or noise.

(3) If sound or noise is not eliminated or abated within a reasonable time after warning, or if the noise or sound is abated after warning and then reoccurs, a notice of violation shall be issued, or the person in possession or control of the cause of the unlawful sound or noise may be arrested and charged with violating this article and upon conviction shall be subject to the penalties designated in this article. For purposes of this section, a reasonable time means such length of time as may fairly, properly and reasonably be allowed or required to eliminate or abate a noise or sound deemed to be in violation of this section, after a warning has been issued. The duration of time shall be dependent on the source of the noise or sound and what action that can be taken to eliminate the noise or sound causing the violation.

Sec. 50-70. Noncompliance with article declared unlawful.

It shall be a violation of this article, except as otherwise expressly permitted, to make, cause or allow the making of any noise or sound that exceeds the limits set forth in this article.

Sec. 50-71. Violations, penalties.

(a) Warnings.

(1) When a designated official of the city determines that there is a violation of the noise level limits contained in this article, he shall issue an official warning to the person responsible for the noise. The warning shall advise the person of the violation of the allowable noise limits, and of the possible penalty if he fails to reduce the noise to such allowable limits or eliminate the noise.

(2) After the person responsible for the noise is given such warning, a reasonable time to comply with the same shall be given. If the limits of Table I

are exceeded, a "reasonable time" is instant. Absent special circumstances, "reasonable time" (where Table I limits are not exceeded) as used in this section is considered 15 minutes in the case of nonvehicular noise and two calendar days for vehicular noise. The term "vehicular noise" does not include radios, tape and compact disc players or other electronically amplified noise being emitted from a vehicle.

(3) For the purposes of this section, it is sufficient warning for all prohibited noises if the person responsible for any succeeding noises is warned of one offending noise of the same type per 14-day period.

(b) Civil infraction; violation of article; confiscation of noise emitter.

(1) If the noise level is not reduced or eliminated to allowable limits within a reasonable time after the warning as prescribed in subsection (a) of this section, the person so warned and not complying shall be cited for a violation of this article and shall be subject to the penalties designated. Each day the violation continues shall be considered a separate violation.

(2) Any person responsible for an unlawful noise shall be subject to the loss of the noise emitter if they are cited three times under this article within a 12-month period and if the citations were for noises created by the same or same type of noise emitter and if the citations were either not contested or were upheld by court if contested. Upon the third citation, the appropriate court shall confiscate the noise emitter and deposit it with the city until such time as the violator can positively demonstrate to the court his willingness and ability to operate the emitter within the limits prescribed by this article. Any further violation shall result in permanent confiscation by the appropriate court.

(3) The city shall notify the operator of any device that produces noise in excess of the limits set by table I that it is a health hazard. The city administrative assistant shall have the power and authority to have the device removed or toned down instantly until such time as it can be otherwise operated in compliance with this article.

(c) Injunctions. The operation or maintenance of any device, instrument, vehicle or machinery in violation of any provisions of this article that endangers the comfort, repose, health and peace of residents in the area is declared to be a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

(d) Responsibility of owner of property. The owner, tenant or lessee of property, or a manager, overseer or agent, or any other person lawfully entitled to possess the property from which the offending noise is emitted and at which time the offending noise is emitted shall be responsible for compliance with this article; and each may be cited for violations of this article. It shall not be a lawful defense to assert that some other person caused the noise, but the lawful

possessor of the premises shall be responsible for operating or maintaining the premises in compliance with this article and shall be cited whether or not the person actually causing the noise is also cited.

(e) Penalties.

(1) The civil penalties to be imposed for violation of this article are as follows:

- a. \$100.00 for the first incident;
- b. \$300.00 for the second incident within a 12 month period;
- and
- c. \$500.00 for the third incident within any 12 month period.

(2) The civil penalties to be imposed for violation of this article if the person who has committed the civil infraction does not contest the citation are as follows:

- a. \$50.00 for the first incident;
- b. \$150.00 for the second incident within a 12 month period;
- and
- c. \$250.00 for the third incident within any 12 month period.

(3) Any incident in excess of three with any 12 month period shall not be a civil infraction but shall be a misdemeanor punishable by a fine of up to \$500.00, incarceration of up to 60 days in jail, or both.

Sec. 50-72. Operation of radios or other mechanical sound-making devices or instruments in vehicles; exemption.

(a) It shall be unlawful and shall constitute a nuisance for any person operating or occupying a motor vehicle on a street, highway or on other public or private property, to operate or amplify the sound produced by a radio, tape player, compact disk player or other mechanical sound-making device or instrument on or within the motor vehicle so that the sound is:

(1) Plainly audible at a distance of 100 feet or more from the motor vehicle; or

(2) Louder than necessary for the convenient hearing by persons inside the vehicle in residential areas or areas adjoining churches, schools or hospitals.

(b) The provisions of this section shall not apply to any law enforcement motor vehicle equipped with any communication device necessary in the performance of law enforcement duties or to any emergency vehicle equipped with any communication device necessary in the performance of any emergency procedures.

(c) The provisions of this section shall not apply to motor vehicles used for business or political purposes which in the normal course of conducting such business uses sound-making devices. The provisions of this subsection shall not be deemed to prevent the city, with respect to the street and highways within its boundaries and within the reasonable exercise of the police power, from regulating the time and manner in which such business may be operated.

(d) The provisions of this section do not apply to the noise made by a horn or other warning device permitted by Section 316.271, Florida Statutes, when used as intended.

(e) If the vehicle is unoccupied at the time the violation is observed, the operator of the vehicle shall be deemed to be the person last operating the vehicle or, if the last operator cannot be determined, the registered owner of the vehicle.

(f) If a notice or citation of a noise violation is not satisfied by full payment of the penalty imposed by that notice or citation within a period of 14 days of the date of the issuance of that notice or citation, the police department shall:

(1) Cause to be sent to the person to whom the notice or citation was issued a summons for court appearance; or

(2) Immobilize, by suitable device, the wheels of any motor vehicle owned by such person wherever it may be found on any street or right-of-way in the city and tag the vehicle such that the operator knows to contact the city police department to have the vehicle released.

(g) Release by the city of a motor vehicle immobilized under this section may be had after:

(1) Payment of the following:

a. All parking violation fines; and

b. All applicable fees assessed for the immobilization;

(h) A vehicle immobilized under this section may be treated as abandoned under applicable laws of the state and city if no operator contacts the city within twelve (12) hours after the immobilization device is affixed to the vehicle.

Sec. 50-73. Animals and birds.


It shall be a violation of this article for the owner or custodian of any animal or bird, other than a farm animal on real property zoned for agricultural use, to allow that animal or bird to frequently or continuously howl, bark, meow, squawk or make other sounds indigenous to such animal which creates a noise disturbance which is plainly audible across a residential or commercial real property line. It shall be a violation of this article for the owner or custodian of any dog to allow that dog to bark, bay, cry, howl, or make any other similar noise continuously for a period of ten minutes or bark intermittently for one-half hour or more to the disturbance of any person at any time, day or night, regardless of whether the dog is physically situated in or upon private property. It shall not be a violation of this article, however for any animal or bird to give a sound of danger warning under circumstances reasonably requiring the need for a warning.

Section 2. Severability. If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the remainder of this ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

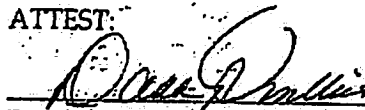
Section 3. Effective Date. This ordinance shall be effective immediately upon final passage by the City Council.

Passed by the City Council of the City of Arcadia, Florida on this 6th day of JULY 2010.


By:


Roosevelt Johnson, Ed.D., Mayor

ATTEST:


Dana L.S. Williams, CMC, City Recorder

Approved as to Form:


William S. Galvano, City Attorney

First Reading: 6/15/10
Second Reading: 7/6/10

Anna Maria

ARTICLE IV. NOISE*

***Cross references:** Jurisdiction of the code enforcement board, § 2-58; animals, ch. 14; peddlers and solicitors, ch. 42; streets, sidewalks and other public places, ch. 50; traffic and vehicles, ch. 58.

State law references: Motor vehicle noise, F.S. §§ 316.293, 403.415.

Sec. 26-86. 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:

Commercial area: Land used primarily for the sale of merchandise or goods, or for the performances of a service, or for office or clerical work.

Construction means any site preparation, assembly, erection, substantial repair, alteration or similar action, excluding demolition, for or on public or private rights-of-way, structures, utilities or similar property.

Demolition means any dismantling, intentional destruction or removal of structures from the utilities, public or private right-of-way surfaces, or similar property surfaces, and shall also include site clearing or land clearing.

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which immediate action.

Emergency work means work made necessary to restore property to a safe condition following an emergency or work required to protect persons or property from exposure to imminent danger or damage.

Motor vehicle means any vehicle which is, or is designed to be, self-propelled or is designed or used for transporting persons or property, including off-road vehicles being operated for recreational purposes.

Motorboat means any boat or vessel propelled or powered by machinery, whether or not such machinery is the principal source of propulsion, including but not limited to boats, barges, amphibious craft, water ski towing devices and hovercraft.

Motorcycle means every motor vehicle having a seat or saddle for the use of a rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters, mopeds or any other motorized bicycle or three-wheeled vehicle. This definition expressly excludes tractors and other farm equipment.

Multifamily dwelling means a building or other shelter which has been divided into separate units to house more than one family, including but not limited to apartments, duplexes and triplexes.

Noise: means any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans. "Noise" includes low frequency vibrations, such as caused by amplification of bass instrumental sounds.

Noise disturbance: Sound which (a) is or may be harmful or injurious to the health or welfare of a reasonable person with normal sensitivities, or (b) unreasonably interferes with the enjoyment or normal conduct of life, property or outdoor recreation, or (c) causes noise pollution, defined as follows:

"Noise pollution" shall mean the presence of noise in excessive or unnecessary amount or of such duration, wave frequency or intensity as to be injurious to human or animal life or property; or which unreasonably interferes with the comfortable enjoyment or normal activities of life or property, or other conduct of business.

Parkland: Land that is used primarily for public recreational activities.

Person: Any individual, natural person, public or private corporation, firm, association, joint venture, partnership, or any other entity whatsoever or any combination of such, jointly and severally.

Powered model vehicle means any self-propelled airborne, water-borne, or land-borne plane, vessel, or vehicle which is not designed to carry persons, including but not limited to any model airplane, boat, car or rocket.

Public right-of-way means any street, avenue, boulevard, highway or sidewalk or alley or similar place normally accessible to the public which is owned or controlled by a governmental entity.

Public space means any real property or structure thereon which is normally accessible to the public.

Real property line

(1) The imaginary line including its vertical extension that separates one parcel of real property from another; or

(2) The vertical and horizontal boundaries of a dwelling unit that is one unit in a multi-dwelling -unit building.

Receiving land: Land area neighboring or in the vicinity of a sound source and on or at which the sound emanating from the sound source is audible to the normal human ear.

Residential: Land use that is primarily for living and sleeping or parkland or schools or nursing homes or any land use that is not commercial or industrial.

Short durations: Any sound with a duration of less than one minute.

Sound: An oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

Weekday means any day, Monday through Friday, which is not a legal holiday.

Zoning and land use definitions. All terms used in this article which refer to zoning or land use categories, including but not limited to commercial area, residential area, etc., shall be defined as set out in the various zoning ordinances and comprehensive plans or other resolutions duly adopted by the city commission.

(Ord. No. 427, art. 4, 12-16-81; Ord. No. 04-616, § 1, 1-22-04)

Cross references: Definitions generally, § 1-2.

Sec. 26-87. Reserved.

Editor's note: Ord. No. 04-616, § II, adopted Jan. 22, 2004, deleted § 26-87 in its entirety. Former § 26-87 pertained to findings of fact and derived from Ord. No. 427, art. 2, 2-16-81.

Sec. 26-88. Declaration of policy.

It is declared the policy of the city to prevent, prohibit and provide for the regulation and abatement of the production of unusually loud, raucous excessive or unreasonable noise which may injure the physical and emotional health or welfare of any of its citizens or degrade the quality of life.

(Ord. No. 427, art. 2, 12-16-81; Ord. No. 04-616, § III, 1-22-04)

Sec. 26-89. Scope.

This article shall apply to the control of all sound originating within the geographical limits of the city.

(Ord. No. 427, art. 3, 12-16-81)

Sec. 26-90. Prohibited acts.

Noise disturbance. Notwithstanding any other provision of this article, and in addition thereto, it shall be unlawful for any person to make or continue, or cause or permit to be made or continued, any noise disturbance, as defined in section 26-86.

Standards. The standards to be considered in determining whether a violation of subsection (l) of this section exists may include but shall not be limited to the following:

- (1) The volume of the noise.
- (2) The intensity of the noise.
- (3) Whether the nature of the noise is usual or unusual.
- (4) The volume and intensity of the background noise, if any.
- (5) The proximity of the noise to residential sleeping facilities.
- (6) The nature and zoning of the area from which the noise emanates.
- (7) The nature and zoning of the receiving land.
- (8) The time of the day or night the noise occurs.
- (9) The duration of the noise.
- (10) Whether the noise is produced by a commercial or noncommercial activity.
- (11) The day of the week the noise occurs.

(Ord. No. 427, art. 5, 12-16-81; Ord. No. 04-616, § IV, 1-22-04)

Sec. 26-91. Exceptions.

The following activities or sources are exempt from the requirements of this article:

- (1) The emission of sound for the purpose of alerting persons to the existence of an emergency, or in the performance of emergency work.
- (2) Between the hours of 7:00 a.m. and 10:00 p.m., ceremonial or traditional activities or events, such as the sounding of church bells and the normal sounds of organized sporting and cultural events, but specifically not including amplified sounds played at volumes or vibrations that violate standards of this article.
- (3) Operation of equipment or conduct of activities normal to residential communities as set forth herein:

TABLE INSET:

	Description	Hours of operation
a.	Lawn care, soil cultivation, domestic power tools, lawn mowers, maintenance of trees, hedges, gardens, saws and tractors, street sweepers, mosquito fogging, tree trimming and limb chipping and other normal community operations	7:00 a.m., to 7:00 p.m.
b.	Operation of equipment for solid waste and recycling collection in or adjacent to residential uses	7:00 a.m. to 7:00 p.m.
c.	Operation of equipment for solid waste collection in nonresidential locations	7:00 a.m. to 7:00 p.m.
d.	Usual noises of commercial construction and operation of construction equipment	7:00 a.m. to 7:00 p.m., Monday through Saturday; and 10 a.m. to 6:00 p.m. Sundays and holidays.

(Ord. No. 427, art. 6, 12-16-81; Ord. No. 04-616, § V, 1-22-04)

Sec. 26-92. Exceptions by permit.

Any person desiring to seek relief from any provision of this article shall apply for a special event permit pursuant to section 114-428, to cause or create noise which would otherwise be in violation of this article.

(Ord. No. 427, art. 7, 12-16-81; Ord. No. 04-616, § VI, 1-22-04)

Sec. 26-93. Enforcement of article; remedies nonexclusive.

This article may be enforced by any of the following remedies. Each remedy is independent of the other.

(1) This article may be enforced pursuant to the code enforcement provisions in section 2-46 et seq.

(2) No provisions of this article shall be construed to impair the city or any other person from bringing any common law, equitable or statutory cause of action, or other legal remedy for injury or damage arising from any violation of this article. As an additional remedy, the operation or maintenance of any device, instrument, vehicle or machinery in violation of any provision of this article shall be deemed and is declared to be a public nuisance and may be subject to abatement summarily by proceedings in a court of competent jurisdiction for injunction, both temporary and permanent, and for such other relief as is proper under the circumstances. The city is hereby authorized to bring any such action authorized in this section on its behalf or on behalf of the general public.

(3) a. Violations of this article are hereby deemed equivalent to a non-criminal infraction and may be enforced through issuance of a citation by a certified law enforcement officer of the city requiring the violator to appear before a judge of the county court or to pay a civil fine set by this section.

b. Any person cited for an infraction under this section must sign and accept a citation indicating a promise to appear. The law enforcement officer may indicate on the citation the time and location of the scheduled hearing, if known at the time of citation, and must indicate the applicable civil penalty established herein.

c. Any person who willfully refuses to accept and sign said citation is guilty of a misdemeanor of the second degree.

d. Except as provided in subsection e., any person charged with a non-criminal infraction under this section who does not elect to appear in county court shall pay the civil penalty and delinquent fee, if applicable, either by mail or in person, within 30 days after the date of issuance of the citation. If the person cited elects to pay a civil penalty pursuant to the above procedure, he or she shall be deemed to have admitted the infraction and to have waived his or her right to a hearing on the issue of commission of the infraction. Such admission shall not be used as evidence in any other proceedings except for determining the cumulative number of violations on the premises as set forth in subsection g., below.

e. Any person electing to appear in county court or who is required so to appear shall be deemed to have waived his or her right to pay the civil penalty established herein. The county court judge, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the county court judge may impose a civil penalty not to exceed \$500, and costs of the proceedings. If the county court judge determines that no infraction has been committed, no costs or penalties shall be imposed and any costs or penalties that have been paid shall be returned.

f. Civil penalties required by this subsection are hereby established as follows:

TABLE INSET:

First offense:	\$ 35.00
Second offense within twelve months of the first offense:	75.00

Third offense within twelve months of the first offense:	200.00
Each additional offense within twelve months of the first offense:	500.00

g. Three or more violations occurring at the same premises within a twelve month period shall be deemed prima facie evidence that the premises is a public nuisance and subject to being temporarily and/or permanently enjoined pursuant to subsection (2) above.

(4) This article may be enforced against any violator, which may include the owner of the premises from which any noise disturbance originates, the manager or person in charge, if not the owner, of the premises from which the noise disturbance originates, or the person or persons generating the noise disturbance.

(Ord. No. 427, art. 8, 12-16-81; Ord. No. 04-616, § VII, 1-2-04)

Secs. 26-94--26-115. Reserved.

Bradenton

ARTICLE V. SOUND CONTROL*

***Editor's note:** Ord. No. 2868, adopted Aug. 15, 2007, amended art. V in its entirety and adopted the provisions set out herein. The former art. V, titled Noise, derived from Code 1971, §§ 17-17(a)-17-17(e).

Cross references: Code enforcement, § 2-291 et seq.

Sec. 38-151. Short title.

This article shall be known and may be cited as the "City of Bradenton Sound Control Ordinance."

(Ord. No. 2868, 8-15-07)

Sec. 38-152. Declaration of policy.

It is hereby declared to be the public policy of the city to reduce the ambient sound level in the city, as so to preserve, protect and promote the public health, safety and welfare, and the peace and quiet of the inhabitants of the city, prevent injury to human, plant and animal life and property, foster the convenience and comfort of its inhabitants, and facilitate the enjoyment of the natural attractions of the city. It is the public policy of the city that every person is entitled to ambient sound levels that are not detrimental to life, health and enjoyment of his or her property. It is hereby declared that the making, creation or maintenance of excessive or unreasonable sound within the city affects and is a menace to public health, comfort, convenience, safety, welfare and the prosperity of the people of the city. The provisions and prohibitions hereinafter contained and enacted are for the above-mentioned purpose.

(Ord. No. 2868, 8-15-07)

Sec. 38-153. Definitions.

(a) As used in this chapter, the following terms shall have the following meanings:

Amplification system means any machine or device used for the amplification of the human voice, music or any other sound, or by which the human voice, music or any other sound is amplified. Amplification system shall not include vehicle radios, CD and/or tape players when used and heard only by the occupants of the vehicles in which the radio, CD, and/or tape player is installed. Amplification system shall not include warning devices on authorized emergency vehicles or horns or other warning devices on any vehicles used for traffic safety purposes. Amplification system, shall not include police equipment used for law enforcement purposes or equipment used for emergency work.

Amplified means to increase the strength, amount of, or loudness of a device.

Amplified sound means using or operating for any purpose, or permitting the operation or use for any purpose, any amplification system or any amplified radio, phonograph, tape player, television set, musical instrument, drum or similar device which is amplified.

A-weighted sound level means the sound pressure level in decibels as measured on a sound level meter using the A-weighted network. The level so read is designated "dBA."

City clerk means the city clerk of the city or his or her designee.

Completely enclosed building means a building separated on all sides from adjacent open space or from other buildings by permanent roof and by exterior walls or party walls, pierced only by closed windows and normal entrance or exit doors. Such doors shall not be kept open except for normal ingress and egress.

Construction means any activity incidental to the erection, demolition, assembling, altering, installing or equipping of buildings, public or private highways, roads, premises parks, utility lanes or other property, including, but not limited to, related activities such as land clearing, grading, earthmoving, excavation, blasting, filling and landscaping but not including agriculture.

"dBA" means the abbreviation designating the unit of sound level as measured by a sound level meter using the A-weighting, also known as "DBA."

"dBC" means the abbreviation designating the unit of sound level as measured by a sound level meter using the C-weighting, also known as "DBC."

Decibel means the practical unit of measurement for sound pressure level; the number of decibels of a measured sound is equal to 20 times the logarithm to the base ten of the ratio of the sound pressure of the measured sound to the sound pressure of a standard sound (20 micropascals); abbreviated "dB."

Demolition means any dismantling, intentional destruction, or removal of buildings or structures.

Emergency means any occurrence or set of circumstances involving actual or eminent physical trauma or property damage which necessitates immediate action.

Holiday means those days designated by the city council as holiday during which city hall is closed.

Emergency work means work necessary to restore property to a safe condition following an emergency, or work required to protect persons or property from exposure to imminent danger or damage.

Frequency means the number of oscillations per second of a vibration.

Governmental agency means any federal, state, county, municipal, district, board or separate unit of government created or established by law and shall include but not be limited to the state, the county, the city, and the School Board of Manatee County.

Intensity means the magnitude of the force or energy of sound per unit area or volume.

Loudspeaker means a device, such as a sound truck, bullhorn, or the like which produces or reproduces sound. "Loudspeaker" shall not include a radio, CD or DVD player, tape player, television set, musical instrument, drum or similar device, or the amplification of a radio, CD or DVD player, tape player, television set, musical instrument, drum or similar device.

Motorcycle means every motor vehicle having a seat or saddle for the use of a rider and designed to travel on not more than three wheels in contact with the ground, but excluding tractors and other farm equipment, and including motor scooters, mopeds or other motorized bicycle or three-wheel vehicle.

Motor vehicle means any vehicle which is, or is designed to be, self-propelled or is designed or used for transporting person or property, including off-road vehicles being operated for recreational purposes.

Noise-sensitive area means any area designated by the city or county as requiring strict noise limitations in the interests of the public health, safety and welfare, including, but without being limited to, schools, libraries open to the public, hospitals, churches, nursing homes and convalescent homes. Such areas shall be marked by conspicuous signs designating such area as a noise-sensitive area.

Octave-band filter means an instrument calibrated in preferred frequencies, for which criteria have been established by the American Standards Association, used in conjunction with a sound-level meter to take measurements in specific octave bands.

Person means the state or any agency or institution thereof, a municipality, political subdivision, public or private corporation, individual, partnership, association or other entity, and includes any officer, employee, agent or governing or managing body of any municipality, political subdivision or public or private corporation.

Powered model vehicle means any self-propelled airborne, waterborne, or landborne plane, vessel or vehicle which is not designed to carry persons, including, but not limited to, any model airplane, boat, car or rocket.

Public right-of-way means any street, avenue, boulevard, highway, sidewalk or alley, or similar place normally accessible to the public which is owned or controlled by a governmental entity.

Public space means any real property or structures thereon that are owned, leased, or controlled by a governmental entity.

Real property line means (a) the legal boundary line including its vertical extension that separates one parcel of real property from another, or (b) the vertical and horizontal boundaries of a dwelling unit that is one unit in a multidwelling-unit building.

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

Sound, continuous means any sound that is not impulse sound.

Sound, impulse means any sound characterized by either a single pressure peak or a single burst (multiple pressure peaks) having a duration of less than one second.

Sound level means the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, or C as specified in American National Standards Institute specifications for sound level meters (ANSI). If the frequency weighting employed is not indicated, the A-weighting shall apply.

Sound level meter means any instrument including a microphone, amplifier, an output meter, and frequency weighting networks for the measurement of noise and sound levels in a specific manner and which complies with standards established by the American National Standards Institute (ANSI) specifications for sound level meters.

Sound pressure level means the level of a sound measured in dB units with a sound level meter which has a uniform ("flat") response over the band of frequencies measured.

Sound source means any person, animal, device, operation, process, activity, or phenomenon that emits or causes sound.

Unreasonable sound means any sound which is excessive, unnecessary, or unusually loud so that it annoys, disturbs, injures, or endangers the comfort, repose, health, peace or safety of a reasonable person of normal sensibilities.

Vessel is synonymous with boat as referenced in section 1(b), article VII of the state Constitution and includes every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

Volume means the degree of intensity, audibility, quality, strength or loudness of sound.

Weekday means any day, Monday through Friday, which is not a legal holiday.

(b) *Miscellaneous definitions.* All terms herein which refer to zoning or land use categories (including, but not limited to, "nonresidential zoning districts," "residential zoning district," etc.) shall be defined as set forth in the land use and development regulations of the city, as amended, or other ordinances or resolutions duly adopted by the city council.

(Ord. No. 2868, 8-15-07)

Cross references: Definitions generally, § 1-2.

Sec. 38-154. Unreasonable sound prohibited.

(a) Notwithstanding the fact that no violation of section 38-155 is involved:

(1) No person shall make, cause, allow, or permit to be made any unreasonable sound within the geographical boundaries of the city or within those areas over which the city has jurisdiction, including the waters and beaches adjacent to, abutting or bordering the city.

(2) Any of the following acts and causes thereof is declared to be unreasonable sound in violation of this chapter:

a. *Radios, phonographs, tape players, television sets, musical instruments, drums or similar devices.* Operating, playing or permitting the operation or playing of any radio, CD or DVD player, tape player, phonograph, television set, musical instrument, drum or similar device which produces or reproduces sound in such a manner as to annoy, disturb, injure or endanger the comfort, repose, health, peace, or safety of a reasonable person of normal sensibilities.

b. *Radios, phonographs, tape players, television sets, musical instruments, drums or similar devices on bicycle or by pedestrian.* Operating, playing or permitting the operation or playing of any radio, CD or DVD player, phonograph, tape player, television set, musical instrument, drum or similar device which produces or reproduces sound in or on any bicycle or by any pedestrian on a public right-of-way or in any public parking lot in such a manner as to annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of a reasonable person of normal sensibilities.

c. *Loudspeakers.* Using or operating for any purpose any loudspeaker between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and 10:00 p.m. and 10:00 a.m. on weekends and holidays. This section shall not apply to events or activities of a governmental agency.

d. *Street sales.* Offering for sale, selling anything or advertising by shouting or outcry.

e. *Animals.* Owning, possessing, harboring, keeping, raising or maintaining any animal, which frequently or for continued duration howls, barks, yelps, squawks, screeches, or makes other sounds in such a manner as to annoy, disturb, injure or endanger the comfort, repose, health, peace, or safety of a reasonable person of normal sensibilities. This provision shall not apply to public zoos or private animal attractions operated for profit to which the public has general admission and which are regulated by the city nor to livestock on a working farm in an area zoned for such.

f. *Loading and unloading.* Loading and unloading, opening, closing or other handling of boxes, crates, containers, equipment, building materials, garbage cans or similar objects in such a manner as to annoy, disturb, injure or endanger the comfort, repose, health, peace, or safety of a reasonable person of normal sensibilities between the hours of 7:00 p.m. and 7:00 a.m. on weekdays and 7:00 p.m. and 9:00 a.m. on weekends and holidays in or within 50 yards of any residential real property line or noise-sensitive area. This section shall not apply to solid waste collection activities of a governmental agency or governmental agency contractor.

g. *Construction and demolition.* Engaging in construction, drilling, repair, alteration, demolition, land clearing or land filling operations between the hours of 6:00 p.m. and 7:00 a.m. on weekdays or between 6:00 p.m. and 9:00 a.m. on Saturdays or holidays except for emergency work by a public service utility or by other permit approved by the city. Such activity is prohibited on Sundays. This subsection shall not apply to the use of domestic power tools as specified in subsection j.

h. *Powered model vehicle.* Operating or permitting the operation of any powered model vehicle between the hours of 7:00 p.m. and 7:00 a.m. on weekdays and 7:00 p.m. and 9:00 a.m. on weekends or holidays in or within 50 yards of any residential real property line or noise sensitive area.

i. *Emergency signaling devices.* The testing outdoors of any fire, burglar or civil defense alarm, fire, whistle or similar stationary emergency signaling device shall not occur before 7:00 a.m. or after 7:00 p.m.; and any such testing shall use the minimum cycle test time appropriate for such devices, in no case to exceed 60 seconds. Testing of the complete emergency signaling system, including the functioning of the signaling device and the personnel response to the signaling device, shall not occur more than once in each calendar month. Such testing shall occur only on weekdays and not before 7:00 a.m. or after 10:00 p.m. and shall be exempt from the 60-second time limitations set forth herein. The sounding or the permitting of the sounding of any exterior fire or burglar alarm or motor vehicle burglar alarm, unless such alarm is automatically terminated within 15 minutes of activation shall be prohibited.

j. *Domestic power tools.* Operating or permitting the operation of any mechanically powered saw, fender, drill, grinder, lawn or garden tool, or similar tool between 10:00 p.m. and 7:00 a.m. on weekdays or 10:00 p.m. and 8:00 a.m. on weekends and holidays, unless such equipment is operating inside a completely enclosed structure.

k. *Internal combustion engine.* Rapid throttle advance (revving) of an internal combustion engine on the public right-of-way resulting in increased sound from the engine for the purpose of drawing attention to the source of the sound.

(b) The standards which shall be considered in determining whether sound annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of a reasonable person of normal sensibilities shall include, but shall not be limited to, the following:

- (1) The volume of the sound.
- (2) The intensity of the sound.
- (3) Whether the nature of the sound is usual or unusual.
- (4) The volume and intensity of the background sound, if any.
- (5) The proximity of the sound to residential sleeping facilities.
- (6) The nature and zoning of the area within which the sound emanates.
- (7) The time of the day or night the sound occurs.
- (8) The duration of the sound.
- (9) Whether the sound is produced by a commercial or noncommercial activity.

(Ord. No. 2868, 8-15-07)

Sec. 38-155. Maximum sound levels.

(a) *Method of measurement generally.* For the purpose of measuring the volume, intensity and frequencies of sound, the measurement of sound shall be made with a decibel or a sound level meter operating on the "A" or "C" weighting scale of any standard design and quality meeting the standards prescribed by the American National Standards Association. The instruments shall be maintained in calibration and good working order. Measurements recorded shall be taken so as to provide a proper representation of the sound source. The microphone used during measurement shall be positioned so as not to create any unnatural enhancement or diminution of the measured sound. A wind screen for the microphone shall be used when required. Traffic, aircraft, and other background sounds shall not be considered in taking measurements except where such background sound interferes with the primary sound being measured.

- (1) The slow meter response of the sound level meter shall be used in order to best determine that the average sound has not exceeded the standards set forth in subsections (b)(2) and (b)(3) below.
- (2) The measurement shall be made at or beyond the real property line on which such sound is generated, or perceived, as appropriate, approximately five (5) feet above ground.
- (3) In the case of an elevated or directional sound source, compliance with the sound limits is to be maintained at any elevation at or beyond the real property line.

(b) *Maximum permitted sound-pressure level in decibels.*

(1) Amplified sound not in a completely enclosed building. Subsection (2) notwithstanding, no person shall make, cause, allow, or permit the operation of any amplified sound, not in a completely enclosed building between the hours of 10:00 p.m. and 7:00 a.m. the following morning, in such a manner as to create, when measured at or beyond the real property line from which the sound emanates, a sound level that exceeds 65 dBA, 70 dBC or has a 5 dB or greater difference between the dBA and dBC sound levels.

(2) Continuous source.

- a. Between the hours of 7:00 a.m. and 10:00 p.m., no person shall make, cause, allow, or permit the operation of any continuous source of sound in

such a manner as to create, when measured at or beyond the real property line from which the sound emanates, a sound level that exceeds 75 dBA, 80 dBC or has a 10 dB or greater difference between the dBA and dBC sound levels.

b. Between the hours of 10:00 p.m. and 7:00 a.m. the following morning, no person shall make, cause, allow, or permit the operation of any continuous source of sound in such a manner as to create, when measured at or beyond the real property line from which the sound emanates, a sound level that exceeds 75 dBA, 75 dBC or has a 10 dB or greater difference between the dBA and dBC sound levels.

(3) *Impulsive source.* No person shall make, cause, allow, or permit the operation of any impulsive source of sound which has a peak sound in such a manner as to create, when measured at or beyond the real property line from which the sound emanates, a sound level that exceeds 80 dBA. If an impulsive sound is the result of the normal operation of an industrial or commercial facility and occurs more frequently than four times in any hour, the levels set forth in this subsection shall apply.

(Ord. No. 2868, 8-15-07)

Sec. 38-156. Exceptions by permit.

(a) *[Temporary exemptions.]* A person may seek a temporary exemption from the provisions of this code by seeking a special permit from the city clerk. A fully complete special permit application must be submitted, on a form provided by the city clerk. A special permit may only be issued for a specified limited period of time and shall set forth such conditions or requirements as shall be deemed necessary to mitigate potential adverse effects upon neighboring properties and to otherwise ensure that the public health, safety and general welfare is protected. The city clerk may adopt administrative rules, as he or she deems necessary, to implement the provisions of this section.

(b) *[Criteria for determination.]* In determining whether a special permit shall be issued, the city clerk shall consider the following criteria:

- (1) The nature of the event and its importance to the general community;
- (2) The potential benefit to the city or the general public which may result from the proposed event;
- (3) The size of the event with respect to anticipated public participation or attendance;
- (4) The availability of alternate locations where the event may reasonably be located without creating the type or degree of potentially adverse effects it is anticipated would result at a site for which the special permit is requested;
- (5) That the granting of the special permit will not be contrary to the public health, safety and general welfare of the residents and establishments of the neighborhood and surrounding properties;
- (6) That the granting of the special permit is appropriate and compatible to the existing uses of the contiguous and surrounding properties;
- (7) That the granting of the special permit will not establish a precedent of or encourage more incompatible uses in the surrounding area;

(8) That the applicant has demonstrated that enforcement of the provisions of this chapter would create an undue hardship on the applicant because of unique circumstances peculiar to the applicant;

(9) That the applicant has demonstrated the effectiveness of sound attenuation methods and submitted methods that the applicant will employ to lessen the potentially adverse impact associated with the grant of a special permit, and

(10) That the applicant has not violated the terms or conditions of any previously granted special permit.

(c) *[Decision deadline.]* The city clerk shall grant or deny an application for a special permit within 15 days from the date of the filing of a fully complete application. An application may be denied if it is determined to be incomplete. If no ruling has been made, upon the expiration of the fifteenth day, or if the fifteenth day is a Saturday, Sunday, or holiday, upon the following working day, the application shall be deemed to be granted.

(d) *Grant of an application for a special permit.*

(1) If there are no grounds for requiring denial, the city clerk shall grant the application for special permit and shall issue the special permit.

(2) The special permit, if granted, shall state on its face the name and address(es) of the person or persons to whom it is granted, the expiration date, the location applicable to the special permit and any special conditions or requirements imposed thereby. The special permit may not be transferred to any other person or location.

(e) *Appeal.* An appeal of the decision of the city clerk may be made to the city council which shall review the decision utilizing the criteria contained in this section and uphold or overrule the city clerk's decisions; the city council shall hear the appeal at the earliest available regular meeting after the appeal is filed provided the appeal is filed within five days before the meeting. In lieu of the appeal to the city council the applicant may appeal the decision of the city clerk directly to the Circuit Court for the County of Manatee, by filing a petition for writ of certiorari as provided for under the Florida Rules of Appellate Procedure. A decision of the city clerk or city council shall be deemed to have been rendered on the date it is given to the applicant.

(f) *[Violation.]* Any violation of any conditions imposed upon the granting of the special permit shall be deemed a violation of this chapter.

(Ord. No. 2868, 8-15-07)

Sec. 38-157. Exemptions.

The provisions of this chapter shall not apply to:

(1) Any conduct regulated by F.S. § 316.3045 as may be amended, pertaining to sound produced by a radio, CD player, tape player or other mechanical sound-making device or instrument operated or amplified within a motor vehicle;

(2) Sound made by a horn or other warning device required or permitted by F.S. § 316.271 as may be amended;

(3) Sound produced by a motorboat regulated pursuant to F.S. § 327.65 as may be amended.

- (4) Air conditioners when functioning in accord with the manufacturer's specifications and with all manufacturer's mufflers and sound-reducing equipment in use and in proper operating condition;
- (5) Nonamplified crowd sounds resulting from otherwise lawful public gatherings;
- (6) Construction, drilling, repair, alteration, demolition, land clearing or land filling operations between the hours of 7:00 a.m. and 6:00 p.m. on weekdays or between 9:00 a.m. and 6:00 p.m. on Saturdays or holidays for which all required permits have been issued, provided that the equipment involved is operated in accord with the manufacturer's specifications and with all manufacturer's sound-reducing equipment in use and in proper operating condition;
- (7) Operation of any powered model vehicle between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and 9:00 a.m. and 7:00 p.m. on weekends or holidays in or within 100 yards of any residential area, provided that the powered model vehicle involved is operated in accord with the manufacturer's specification and with all manufacturer's sound-reduction equipment in use and in proper operating condition;
- (8) Sound from any safety signal, warning device or emergency pressure relief valve for the purpose of alerting the public of an emergency or performance of emergency work. However, the testing of any such device shall be subject to the requirements of subsection 38-154(a)(2);
- (9) Operation of any mechanically powered saw, fender, drill, grinder, lawn or garden tool, or similar tool between 7:00 a.m. and 10:00 p.m. on weekdays or 8:00 a.m. and 10:00 p.m. on weekends and holidays provided that the equipment involved is operated in accord with the manufacturer's specifications and with all manufacturer's sound-reducing equipment in use and in proper operating condition;
- (10) Sound resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of an emergency;
- (11) Any aircraft operating in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control instructions used pursuant to and within the duly adopted federal air regulations;
- (12) The normal operations of railroad trains;
- (13) Motor vehicles and vessels when functioning with all manufacturer's mufflers and noise-reducing equipment in use and in proper operating condition;
- (14) Sound resulting from emergency work;
- (15) Church bells and carillons;
- (16) Governmental agency or governmental agency contractor road construction equipment and related activities;
- (17) Amplified sound on property controlled by a governmental agency during governmental sponsored activities;
- (18) Common carrier stations, including but not limited to bus stations, commercial docks and airports;
- (19) Sound produced by activities in the fields, grounds or facilities of any sporting venue to which the public or community has access;
- (20) Sound made by children and adults on public or private schools and athletic grounds located thereon, during school curricular or extra-curricular activities;

(21) Road festivals, parades, fireworks displays and special events for which an appropriate permit has been obtained from the city, 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;

(22) Festivals or events occurring on public parks or beaches which are permitted or approved by the city;

The uses and activities exempted from this article shall be required to comply with the provisions of all other applicable ordinances of the city and laws of the state.

(Ord. No. 2868, 8-15-07)

Sec. 38-158. Warning and penalty.

(a) When a law enforcement officer has probable cause to believe that a violation of this article has occurred, he or she shall issue a warning to the person or persons responsible for the violation. The warning shall advise the person or persons of the violation of this chapter and specify a reasonable time to comply.

(b) Absent special circumstances, "reasonable time" shall mean 15 minutes.

(c) If the violation is not eliminated within a reasonable time after the warning as prescribed in this section or the violation recurs within 90 days of the issuance of the warning, the person or persons so warned and not complying shall be charged with a violation of this article and shall be subject to prosecution and punishment under the provisions of section 38-159.

(Ord. No. 2868, 8-15-07)

Sec. 38-159. Violations; remedies.

(a) *Violations.* Any person violating this chapter shall be deemed guilty of a Municipal Code violation and upon conviction thereof shall be punished by a fine not exceeding \$500.00 or imprisonment for a term not exceeding 60 days or by both such fine and imprisonment. Each day any violation continues shall constitute a separate offence.

(b) *Additional remedies.* No provision of this article shall be construed to impair any common law, or equitable or statutory cause of action, or other legal remedy of any person for injury or damage arising from any violation of this chapter. As an additional remedy, the operation or maintenance of any device, instrument, vehicle or machinery in violation of any provision hereof which causes discomfort or annoyance, or endangers the comfort, repose, health or peace of a reasonable person of normal sensibilities, shall be deemed and is declared to be a public nuisance and may be subject to application to a court of competent jurisdiction for injunction, both temporary and permanent.

Sec. 38-160. Severability.

In the event any provision or portion of this ordinance is declared void or unenforceable the remaining provisions or portions shall remain in full force and effect.

(Ord. No. 2868, 8-15-07)

Sec. 38-161. Repeal of prior article.

Previous sections 38-151 through 38-155 that existed prior to the adoption of this article are repealed.

(Ord. No. 2868, 8-15-07)