



City of Palmetto Agenda Item

Meeting Date

August 1, 2011

Presenter: Chief Rick Wells and Mark P. Barnebey

Department: Police/City Attorney

Title: Noise Special Permit Exception

ISSUE: For some time, the City has had issues with the granting of noise special permit exceptions, which allowed unlimited noise generation for a limited period of time. On February 22, 2011, the City Commission suspended the ability to obtain a noise special permit exception for six months to determine the effect of a permanent discontinuance for granting of noise exception permits.

DISCUSSION: Generally, it appears that there would be little impact from a discontinuance of granting of noise exception permits. There are a few outdoor events that might be affected, such as the 5th Quarter events held after Palmetto High games and outdoor concerts at the private venues. These types of events would have to lower the noise impacts and/or be relocated indoors. The revisions to the Noise Code as drafted would eliminate the ability to obtain a noise special permit exception. It also clarifies the Code to provide exemptions to the Noise Code for the annual Manatee County Fair and other governmentally held events.

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

Additional Budgetary Information:

Funding Source(s): Sufficient Funds Available: Yes No Budget Amendment Required: Yes No Source:

City Attorney Reviewed: Yes No N/A Advisory Board Recommendation: For Against N/A Consistent With: Yes No N/A

Potential Motion/Direction Requested: I move to schedule a public hearing and second reading on Ordinance 2011-18.

Staff Contact:

Attachments: Draft Ordinance 2011-18 eliminating the ability to obtain a Noise Exception Special Permit.

**CITY OF PALMETTO
ORDINANCE NO. 2011-18**

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, AMENDING THE CODE OF ORDINANCES TO REMOVE THE SPECIAL PERMIT EXCEPTION TO THE CITY'S NOISE RESTRICTIONS; ADDING EXCEPTIONS TO THE NOISE LIMITATIONS FOR NOISE GENERATED AT THE MANATEE COUNTY FAIR AND GOVERNMENTALLY HELD EVENTS; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the Florida Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable municipalities to conduct municipal government, perform municipal functions, and render municipal services; and

WHEREAS, Article VII, Section 2(b), Florida Constitution, and Chapter 166, Florida Statutes, the "Municipal Home Rule Powers Act", authorize municipalities to exercise any power for municipal purposes, except when expressly prohibited by law, and to enact ordinances in furtherance thereof.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, AS FOLLOWS:

Section 1. Amendment of Section 5-4 of the City of Palmetto Code of Ordinances. Section 5-4 of the City of Palmetto Code of Ordinances is hereby amended to read in its entirety as follows:

Section 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 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.

Section 2. Amendment of Section 5-6 of the City of Palmetto Code of Ordinances.
Section 5-6 of the City of Palmetto Code of Ordinances is hereby amended to read in its entirety as follows:

Section 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 or resulting as a collateral matter from an immediate bona fide emergency situation or occurrence, but only for the duration of such emergency.
- (7) Sound emanating from the annual Manatee County Fair.
- (8) Sound emanating from governmentally held events.

Section 3. Removal of Section 5-7 of the City of Palmetto Code of Ordinances. Section 5-7 of the City of Palmetto Code of Ordinances is hereby removed from the Code in its entirety.

Section 4. Repeal of Ordinance. This Ordinance hereby repeals any and all provisions of ordinances in conflict herewith to the extent of such conflict.

Section 5. Severability. If any section, sub-section, paragraph, sentence, clause or phrase in this Ordinance shall be held invalid by a court of competent jurisdiction, then such invalidity shall not affect the remaining portions hereof.

Section 6. Effective Date. This Ordinance shall take effect as provided for by law and by City Charter, Section 14, upon execution by the Mayor, or if disapproval occurs, upon reconsideration by the City Commission and passing of the Ordinance by at least four (4) votes of the City Commission.

PASSED AND DULY ADOPTED, by the City Commission, in open session, with a quorum present and voting, this 15th day of August, 2011.

First Reading: August 1, 2011
Publication: August 4, 2011
Second Reading and
Public Hearing: August 15, 2011

CITY OF PALMETTO, FLORIDA, BY
AND THROUGH THE CITY
COMMISSION OF THE CITY OF
PALMETTO

By: _____
SHIRLEY GROOVER BRYANT, MAYOR

ATTEST: James R. Freeman
City Clerk

By: _____
City Clerk/Deputy Clerk.

The telemetry meter program was discussed. Staff was instructed to ascertain the name of the vendor used in a nearby municipality that is experiencing major problems in their utility billing system. Mr. Freeman briefly described conversations with ESG, a company doing an energy study as part of the energy grant, regarding a telemetry program. If the program is implemented it will guarantee additional revenue because of the accuracy of the meters. The additional revenue will pay the financing of the program. If the additional revenue is not realized, the company will pay the financing component of the program for the City.

The golf course ponds were added after inspection with the Department of Environmental Protection, as a site to accept excessive reclaimed water. The City will have to install a meter and amend its permit with SWFWMD. This will serve as a safeguard in storing treated water until the ASR well is constructed.

Commission requested that if the Public Building projects funds are not spent as identified that they be informed of the proposed project where they will be expended.

Mr. Tusing discussed the waterline rehabilitation that was not funded last year and the need to identify funding for this year. He cited historical instances where not performing the rehabilitation resulted in much higher costs to the City.

Staff will bring back options for the projects proposed to be funded from loan funds. Mr. Tusing assured Commission that they will be presented proposed project budgets for approval.

3. NOISE EXCEPTION PERMIT

Mayor Bryant recommended placing a six-month moratorium on the issuance of noise exception permits to evaluate the impact of possible long term elimination or modification of the requirements of the permits. Discussion ensued, with Commission generally agreeing to the Mayor's recommendation.

Mayor Bryant made the following announcements:

The motel will be demolished.

Commissioner Zirkelbach is absent from the meeting due to illness.

The Ward I Phase II groundbreaking is tomorrow at 9:30 a.m.

Meeting adjourned at 7:35 p.m.

Minutes approved: March 21, 2011

James R. Freeman

James R. Freeman
City Clerk

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.

Such bond or certificate of insurance shall be subject to approval by the city attorney. This section shall apply to all persons, whether or not such persons are exempt from any other provision of this Code.

(Code 1975, § 5-2; Ord. No. 602, § IX, 9-9-97)

Secs. 5-10—5-25. Reserved.

ARTICLE II. DANCES AND DANCE HALLS

Sec. 5-26. Definition.

The term dance hall as used in this article shall be defined as any business establishment which permits dancing on the premises and which is not a licensee of the state beverage department.

(Code 1975, § 5-14)

Sec. 5-27. Hours of operation.

It shall be unlawful for any dance hall which is located within the city to be open for business between the hours of 2:30 a.m. and 6:00 a.m. Tuesday through Saturday or be open for business between the hours of 12:30 a.m. Sunday to 6:00 a.m. Monday.

(Code 1975, § 5-15)

Secs. 5-28—5-45. Reserved.

ARTICLE III. POOLROOMS, BILLIARD HALLS

Sec. 5-46. Minors prohibited.

(a) It shall be unlawful for any minor to enter any poolroom or billiard room where alcoholic beverages are sold within the city.

(b) It shall be unlawful for the owner, operator or person in charge of any poolroom or billiard room where alcoholic beverages are sold within the city to allow or permit any minor to enter such room.

(Code 1975, § 5-27)

Cross reference—Alcoholic beverages, Ch. 4.

Sec. 5-47. Hours of operation.

It shall be unlawful for any person in charge of any poolroom or billiard room to allow such poolroom or billiard room to remain open between the hours of 12:01 a.m. to 7:00 a.m. on weekdays and from 12:01 a.m. on Sunday to 7:00 a.m. on Monday.

(Code 1975, § 5-29)