

ORDINANCE NO. O-4-09

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF PALM BEACH SHORES, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 42. NUISANCES. ARTICLE II. NOISE. BY AMENDING THIS ARTICLE TO PROVIDE INTERNAL CONSISTENCY REGARDING CONSTRUCTION NOISE; REVISE NOTICE REQUIREMENTS FOR VIOLATIONS, AND PROVIDE THAT CERTAIN EXEMPTIONS TO THIS ARTICLE MAY BE AUTHORIZED BY THE TOWN CLERK AND POLICE CHIEF, OR THEIR DESIGNEES; PROVIDING THAT EACH AND EVERY OTHER SECTION AND SUBSECTION OF CHAPTER 42. NUISANCES. SHALL REMAIN IN FULL FORCE AND EFFECT AS PREVIOUSLY ENACTED; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Town Commission of the Town of Palm Beach Shores desires to amend the Town's noise code regulations to provide internal consistency regarding construction noise, revise notice requirements for violations, and provide that certain exemptions to the Town's noise code may be authorized by the Town Clerk and Police Chief, or their designees; and

WHEREAS, the Town Commission believes these revisions to its Code of Ordinances will be in the best interests of the citizens of the Town of Palm Beach Shores.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF PALM BEACH SHORES, PALM BEACH COUNTY, FLORIDA:

Section 1: Chapter 42. Nuisances. of the Code of Ordinances of the Town of Palm Beach Shores is hereby amended at Article II. Noise. to provide internal consistency regarding construction noise; revise notice requirements for violations, and provide that certain exemptions to this Article may be granted by the Town Clerk and Police Chief, or their designees; providing that Article II. Noise. shall hereafter read as follows:

ARTICLE II. NOISE

DIVISION 1. GENERALLY

Sec. 42-31. 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:

Authorized emergency vehicle shall mean vehicles of the fire department (fire patrol), police department and such ambulances and emergency vehicles of municipal departments, public service corporations operated by private corporations, and the state 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.

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

Decibel (dBA) shall mean a unit for measuring the intensity of a sound, the mathematical formula for which is expressed as the volume of a sound which is equal to ten times the logarithm of the ratio of the intensity of the sound to the intensity of a specified standard sound; abbreviated dBA.

Emergency work shall mean work made necessary to restore property to a safe condition following a natural disaster or public calamity; work required to protect persons or property from imminent danger caused by hurricanes, tornados, floods or other natural disasters or public calamity, the use of emergency electrical generators during a period of time when electrical service to the property has been lost, so long as such use is in conformance with the requirements of Pf. 12.8 of the town's zoning ordinance, or work by private or public utilities when installing or restoring utility service.

Loud and raucous noise shall mean sound which, because of its volume level, duration and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons or ordinary sensibilities.

Motorboat shall mean 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, personal watercraft and hover craft.

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

Motor vehicle shall mean any vehicle which is self-propelled.

Noise disturbance shall mean any loud and raucous noise, as well as any sound or noise, though not actually loud and raucous, that due to attending circumstances such as time of day or location, is unnecessary, unwanted, excessive or offensive, or which causes or tends to cause an adverse psychological or physiological effect on human beings exposed thereto.

Powered model vehicle shall mean 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.

Property line shall mean an imaginary line along the surface, and its vertical plane extension, which separates the real property owned, rented or leased by one person from that owned, rented or leased by another person, excluding intrabuilding real property divisions.

Sound shall mean a temporal and spatial oscillation in pressure, or other physical quantity in a medium with internal forces that cause compression and rarefaction of that medium, and which propagates at finite speed to distant points.

Sec. 42-32. Purpose and scope.

It is the purpose of this article to prevent, prohibit and provide for the abatement of loud and raucous noise and noise disturbances which may injure the health or welfare or degrade the quality of life of the citizens and residents of the town and adjoining neighbors in the surrounding municipalities, or other reasonable persons of ordinary sensibilities. This article shall apply to the control of all sounds originating within the limits of this jurisdiction.

Sec. 42-33. Exemptions from article.

The following are exempt from this article.

- (1) All equipment tests required by law;
- (2) All procedures or processes required by law;
- (3) All accidental sounding of equipment making noise prohibited in this article;
- (4) Noises of safety signals, warning devices and emergency pressure relief valves;
- (5) Noises resulting from emergency work;
- (6) Any other noise resulting from activities of a temporary duration and for which permission has been granted by the Town Clerk or designee and the Police Chief or designee, or the Town Commission, as applicable town;
- (7) Authorized emergency vehicles;
- (8) Construction equipment legally on the job site or traveling on streets during hours allowed by the Town Code of Ordinances;
- (9) Any motor vehicle which is not required to be licensed under the provisions of F.S. Ch. 320;
- (10) The use of emergency electrical generators during a state of emergency declared pursuant to section 26-26 of the Town Code of Ordinances, or when electrical service to the property has been lost.

Secs. 42-34--42-36. Reserved.

Sec. 42-37. Penalty for violation of article; abatement of violations.

Any person violating any of the provisions of this article shall, upon a finding of violation conviction, be subject to the following penalties:

- (1) *First violation* --Written or verbal warning, at discretion of police or code enforcement officer;
- (2) *Second violation* --A fine of \$50.00;
- (3) *Subsequent violations occurring within any 12-month period* --A fine of \$100.00 for each violation.

Secs. 42-38--42-40. Reserved.

DIVISION 2. ADMINISTRATION AND ENFORCEMENT

Sec. 42-41. Enforcement authority.

The provisions of this article involving sound and noise control occurring on the streets or pedestrian ways or other public areas including, but not limited to, parks and public recreation areas, public buildings and other public property and any complaints of noise on private property within the town shall be investigated and enforced by the police department and/or the code enforcement department.

Sec. 42-42. Enforcement procedure.

(a) The procedure for enforcing operating motor vehicle noise standards shall be as established in F.S. ch. 316 and applicable rules and regulations of the state department of pollution control with the cooperation of the state department of highway safety and motor vehicles.

(b) In all other cases, the procedure for enforcing the provisions of this article shall be as follows:

(1) The enforcement authority shall investigate and determine if the sound or noise is in violation of this article.

(2) If the sound or noise is found to be in violation of this article, the enforcement authority shall give a warning to the person or persons responsible for the loud and raucous noise or the noise disturbance.

(3) If the loud and raucous noise or the noise disturbance is not abated within a reasonable time after warning, a notice of violation shall be issued by a police or code enforcement officer in accordance with the notice requirements of Sec. 2-70 and/or 2-75 of the Town Code of Ordinances, as applicable. If the loud and raucous noise or the noise disturbance rises to the level of a criminal violation of state law, ~~or~~ the person in possession or control of the cause of the loud and raucous noise or the noise disturbance may be arrested by the police department and charged accordingly ~~with violating this article.~~

(4) A reasonable time for compliance as set forth in subparagraph (3) above is such length of time as may fairly, properly and reasonably be allowed or required having regard to the nature of the loud and raucous noise or the noise disturbance, and the attending circumstances.

Secs. 42-43, 42-44. Reserved.

DIVISION 3. STANDARDS

Sec. 42-45. Noise disturbances prohibited generally.

It shall be unlawful for any person to make, continue or cause to be made or continued any loud and raucous noise which because of its volume level, duration and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons or ordinary sensibilities; or make, continue or cause to be made or continued any

noise disturbance within the boundaries of the city or adjoining neighbors of the surrounding municipalities as prohibited in this article.

Sec. 42-46. Specific prohibitions.

The following acts, and the causing or permitting thereof, are declared to be in violation of this article:

(1) *Radios, television sets, musical instruments, ~~and~~ similar devices and on-site amplified music.* Operating, playing or permitting the operation or playing of any television, phonograph, drum, musical instrument or similar device which produces or reproduces sound, or permitting on-site amplified music, between the hours of 8:00 p.m. and 8:00 a.m. the following day in such a manner as to create a noise disturbance across a real property line; or at any time in such a manner as to create a loud and raucous noise, except for activities for which prior permission has been given in writing by the Town Clerk or designee, and the Police Chief or designee ~~town commission.~~

(2) *Loudspeakers.* Using or operating for any purpose any loudspeaker, loudspeaker system or similar device between the hours of 8:00 p.m. and 8:00 a.m. the following day, such that the sound therefrom creates a noise disturbance across a residential real property line; or at any time in such a manner as to create a loud and raucous noise, except for activities any noncommercial public speaking, public assembly or other activity for which prior permission has been given in writing by the Town Clerk or designee, and the Police Chief or designee ~~issued by the town commission.~~

(3) *Animals.* Owning, possessing or harboring any animal or bird which frequently or for continued duration howls, barks, meows, squawks or makes other sounds which create a noise disturbance across a real property line between the hours of 8:00 p.m. and 8:00 a.m. the following day; or at any time create a loud and raucous noise.

(4) *Loading and unloading.* Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans, or similar objects between the hours of 8:00 p.m. and 8:00 a.m. the following day in such a manner as to cause a noise disturbance across a real property line; or at any time in such a manner as to create a loud and raucous noise.

(5) *Construction.* Operating or causing the operation of any tools or equipment used in construction, drilling, repair, alteration or demolition work or related construction activity, between the hours of 5:00 p.m. and 8:00 a.m. the following day Monday through Saturday (October 1 through April 30), or between the hours of 6:00 p.m. and 8:00 a.m. the following day Monday through Saturday (May 1 through September 30), or at any time on Sundays, New Year's Day, Thanksgiving Day and Christmas Day, such that the sound therefrom creates a noise disturbance across a real property line; or at any time in such a manner as to create a loud and raucous noise.

(6) *Vehicle, motorboat or aircraft repairs and testing.*

a. Repairing, rebuilding, modifying or testing any motor vehicle, motorboat or aircraft between the hours of 8:00 p.m. and 8:00 a.m. the following day in such a manner as to create a noise disturbance across a real property line; or at anytime in such a manner as to create a loud and raucous noise.

b. Nothing in this section shall be construed to prohibit, restrict, penalize, enjoin or in any manner regulate the movement of aircraft which are in all respects conducted in accordance with or pursuant to applicable federal laws or regulations.

(7) *Explosives, firearms and similar devices.* Using or firing explosives, firearms or similar devices such that the sound therefrom creates a loud and raucous noise, or a noise disturbance across a real property line, or within a noise sensitive zone, public space or public right-of-way, without first obtaining permission in writing by the Town Clerk or designee, and the Police Chief or designee ~~from the town commission.~~

(8) *Powered model vehicles.* Operating or permitting the operation of powered model vehicles between the hours of 8:00 p.m. and 8:00 a.m. the following day so as to create a noise disturbance across a real property line; or at any time in such a manner as to create a loud and raucous noise.

(9) *Stationary nonemergency signal devices.* Sounding or permitting the sounding of any electronically amplified signal from any stationary bell, chime, siren, whistle or similar device, intended primarily for nonemergency purposes, from any place, for more than ten seconds in any hourly period.

(10) *Emergency signaling devices.*

a. The intentional sounding or permitting the sounding outdoors of any fire, burglar or civil alarm, siren, whistle or similar stationary emergency signaling device except for emergency purposes or for testing, as provided in subsection b. below.

b. Testing:

1. Testing of a stationary emergency signaling device shall not occur before 8:00 a.m. or after 8:00 p.m. Any such testing shall only use the minimum cycle test time. In no case shall such test time exceed 60 seconds.

2. Testing of the complete emergency signaling system, including the function 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 not occur before 8:00 a.m. or after 8:00 p.m.

c. Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm unless such alarm is automatically terminated within 15 minutes of activation.

(11) *Motorboats.* Operating or permitting the operation of any motorboat in any lake or waterway between the hours of 8:00 p.m. and 8:00 a.m. the following day in such manner as to cause a noise disturbance across a real property line; or at any time in such a manner as to create a loud and raucous noise.

(12) *Power tools (operated by homeowner or resident only).*

a. Operating or permitting the operation of any mechanically powered saw, sander, drill, grinder, lawn or garden tool, or similar tool so as to create a noise disturbance across a real property line between 8:00 p.m. and 8:00 a.m. Monday through Saturday or all day on Sundays, New Year's Day, Thanksgiving Day and Christmas Day; or at any time in such a manner as to create a loud and raucous noise.

b. Operating or permitting the operation of any mechanically powered tool of any kind, whatsoever, not properly muffled and maintained in good working order.

(13) *Emergency electrical generators.* Operating or permitting the operation of any emergency electrical generator within the Town so as to create a noise disturbance across a real property line except in conformance with the requirements of Pf. 12.8 of the Town's Zoning Ordinance.

(14) *Multifamily dwellings.* Operating or permitting the operation within a multifamily dwelling of any source of sound, in such a manner as to create a noise disturbance within

an adjacent intrabuilding dwelling between the hours of 8:00 p.m. and 8:00 a.m. the following day; or at any time to create a loud and raucous noise.

(15) *General prohibitions.* Any sound that is not otherwise regulated or prohibited elsewhere in this article which is loud and raucous, or a noise disturbance, as defined in this article shall be considered a violation of this article.

(16) The town commission may also grant temporary exemptions from the prohibited acts listed above to allow latitude in such instances and under such circumstances where good cause can be shown.

Sec. 42-47. Amplified noise prohibited.

It shall be unlawful for any person, either as an individual, principal, agent or employee, to play, use or operate on or upon the public streets of the town any device known as a sound truck, loudspeaker or sound amplifier or radio or phonograph equipped with a loudspeaker or sound amplifier or any instrument of any kind or character which emits loud and raucous noises and is attached to or upon any vehicle operated or standing upon any street of the town, unless prior permission has been given in writing by the Town Clerk or designee, and the Police Chief or designee ~~granted by the town commission.~~

Sec. 42-48. Motor vehicle noise prohibited.

(a) *Applicability.* This section applies to the total noise from a vehicle and shall not be construed as limiting or precluding the enforcement of any other provisions of this article relating to motor vehicle mufflers for noise control.

(b) *Operating motor vehicle noise limits.* No person shall operate or be permitted to operate a vehicle at any time or under any condition of roadway, load, acceleration or deceleration in such a manner as to generate a loud and raucous noise as defined in this article or in such a manner as to generate a sound level in excess of 86 dBA at 35 miles per hour or less; or at a sound level in excess of 90 dBA at 36 miles per hour or more, at a distance of 50 feet from the center of the lane of travel, pursuant to F.S. § 316.293.

(c) *Reserved.*

(d) *Measurement procedures.* The measurement procedures for determining compliance with motor vehicle noise limits as set forth at F.S. § 316.293 shall be established by regulation of the state department of environmental regulation as provided in F.S. § 403.415. Such regulations shall include the section of measurement sites and measurement procedures and shall take into consideration accepted scientific and professional methods for the measurement of vehicular sound levels. The measurement procedures may include adjustment factors to be applied to the noise limit for measurement distances of other than 50 feet from the center of the lane of travel.

(e) *Noise abatement equipment modifications.*

(1) No person shall modify the exhaust system of a motor vehicle or any other noise abatement device of a motor vehicle operated or to be operated upon the streets of the town in a manner that the noise emitted by the motor vehicle is above that emitted by the vehicle as originally manufactured.

(2) No person shall operate a motor vehicle upon the street with an exhaust system or noise abatement device so modified.

Secs. 42-49, 42-50. Reserved.

Section 2: Each and every other section and subsection of Chapter 42. Nuisnces. of the Code of Ordinances of the Town of Palm Beach Shores, Florida shall remain in full force and effect as previously enacted.

Section 3: All ordinances or parts of ordinances in conflict be and the same are hereby repealed.

Section 4: Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

Section 5: Specific authority is hereby granted to codify this Ordinance.

Section 6: This Ordinance shall take effect immediately upon adoption.

FIRST READING this 16th day of November, 2009.

SECOND AND FINAL READING this 21st day of December, 2009.

TOWN OF PALM BEACH SHORES

Aye Nay

MAYOR

Aye Nay

VICE MAYOR

Aye Nay

COMMISSIONER

Aye Nay

COMMISSIONER

Aye Nay

COMMISSIONER

ATTEST:

(Seal)

TOWN CLERK

Approved as to form and
legal sufficiency.

TOWN ATTORNEY