

**AGENDA BACKUP MATERIALS
FOR DISCUSSION RE POTENTIAL AMENDMENTS TO
SOUND ORDINANCE**

1. Memorandum from City Attorney dated February 23, 2022 (Page 3)
 - (a) Exhibit "A" to City Attorney Memorandum (Page 15)
 - (b) Exhibit "B" to City Attorney Memorandum (Page 29)
 - (c) Exhibit "C" to City Attorney Memorandum (Page 33)
 - (d) Exhibit "D" to City Attorney Memorandum (Page 37)

City Attorney Memorandum

MEMORANDUM

To: City Commission

From: Robert M. Fournier, City Attorney *RMF*

Re: City Sound Ordinance (Chapter 20, City Code)

Date: February 23, 2022

Over the past few years various issues regarding the interpretation and enforcement City's Sound Control Ordinance have been raised; however, the ordinance has not been amended since 2013. This memorandum is intended to provide a broad overview of the main issues concerning the Sound Ordinance for discussion purposes. After discussion, the City Commission may direct that certain provisions of the Sound Ordinance be amended; direct that no changes be made; or request additional information and research before considering other specific amendments. A copy of the City's current Sound Ordinance, which is codified in Chapter 20 of the City Code, follows this memorandum for reference purposes. (See, Exhibit A)

I. MORE UNDERSTANDABLE ORGANIZATION - SECTION 20-5

Section 20-5(b) of the current Sound Ordinance is intended to prohibit sounds that exceed specific decibel limitations within certain times. However, this is the section of the ordinance that has probably drawn the most complaints for being confusing to understand and enforce. This section regulates three different categories of sound. First, subsection 20-5(b)(1) initially singles out "amplified sound" to be separately regulated. But amplified sound is separately regulated only when it is "not in a completely enclosed building." Subsection 20-5(b)(2) then goes on to specify two different maximum decibel limitations for "continuous source" sound depending on the time of day or night when the "continuous source" sound occurs. Finally, subsection 20-5(b)(3) provides that no person shall make, cause, allow or permit the operation of any source of "impulsive sound" that exceeds the maximum decibel limits specified in that subsection.

The terms "continuous source" and "impulsive source" are not defined in the ordinance. One seemingly clear definition of impulsive source sound or impulsive sound that I have found states that: "Impulsive sound means a sound of short

duration, usually less than a second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions and discharge of a fire arm." Although there may be some benefit to having a section of the sound ordinance address "impulsive source" sound, questions have been raised about the utility of continuing to use the term "continuous source" sound as a separate category of sound to be regulated by the ordinance. It may be more useful to simply distinguish between sounds emanating from an indoor source and sounds from an outside source regardless of whether the sound is "continuous". That is, for sounds coming from inside sources, different maximum decibel levels could be applied during certain hours of the day and lower maximum decibel levels could be imposed after a specified time. Likewise, for sounds coming from outside sources, there could be a maximum decibel limit applied during daytime hours with a lower limit after a certain specified time. These times could vary depending on the day of the week.

A review of Section 20-5(b) of the Sound Ordinance also raises the question of whether it is necessary to regulate "amplified sound" as a separate category of sound. Subsection 20-5(b)(1) says that the limitations on amplified sound not in a completely enclosed building shall apply "notwithstanding" the provisions of Subsection 20-5(b)(2) that apply to "continuous source" sound whether it comes from an outside source or an inside source. This provision suggests, but does not explicitly state, that there is an overlap between subsection (b)(1) (amplified sound not in a completely enclosed building) and subsection (b)(2) (continuous source sound whether inside or outside) and that when both subsections could apply that subsection (1) controls. The maximum limitations on "amplified sound not in a completely enclosed building" found in Subsection 20-5(b)(1) apply only after certain specified hours. This has caused some to argue that "amplified sound not in a completely enclosed building" is left unregulated by the ordinance outside of those specified hours while others have argued that amplified sound is subject to the maximum decibel limits applicable to "continuous source" sound outside of those specified hours (i.e. mainly during the daytime hours).

Additionally, Section 20-5 contains three different provisions all of which specify the times at which the maximum decibel level limits for certain sounds are required to be lowered. This has also caused confusion. The first two specified times apply to reduction of the volume of amplified sound not in a completely enclosed building. First, Section 20-5(1)a states that for "amplified sound not in a completely enclosed building," a sound level that exceeds 65 dBA, 70 dBc or has a 5 dB or greater difference between the two sound levels is unlawful after 10 pm every night and before 7 am every morning, seven days a week. But Section 20-5(1)b extends these times for when amplified sound emanating from the City owned

property on the Lemon Avenue Mall has to be reduced to 11 am on weeknights and to 11:59 pm on weekends and nights before federal holidays. The City has been uniformly enforcing the later decibel reduction times applicable to Lemon Avenue Mall for all outdoor source amplified sound in the City. (The terms "outdoor source" and "not within a completely enclosed building" are intended to have the same meaning and are used interchangeably.) Many downtown residents have stated a preference for an earlier time when the maximum decibel level of outdoor source amplified sound should be reduced.

Furthermore, Section 20-5(2)b states that for "continuous source" sound, a sound level that exceeds 75dBA, 75dBC or has a 10 dBA or greater difference between the two sound levels is unlawful after 11 pm and before 7a.m. seven nights a week. Section 20-5(2)b is most likely intended to apply to indoor source sound, whether amplified or not. However, as noted above, when Section 20-5 is read in its entirety, subsection 20-5(2)a was probably intended to apply to amplified outdoor source sound as well. There is a need for clarification of Section 20-5 concerning the times when the maximum volume of sound has to be reduced. The Police Department has repeatedly requested more uniformity of regulation so as to facilitate training and instruction of officers and to provide more effective enforcement.

QUESTIONS PRESENTED:

1. Is there a need to regulate amplified sound as a separate category of sound? If so, should the regulation apply to both outdoor and indoor source amplified sound?
2. Will the City Commission authorize the City Attorney to draft an amendment to Section 20-5 that regulates sound based on a simple distinction between "inside source" sound and "outside source" sound?
3. Will the City Commission provide direction as to the hours during which the volume of sound is required to be lowered? If so, will these times vary depending on whether the sound is outside source sound or inside source sound?
4. If the answer to the first question in paragraph 3 above is not at this time, will the City Commission authorize the City Attorney to consult with the City Manager and SPD to prepare an ordinance incorporating their recommendations for consideration?

II. PLAINLY AUDIBLE STANDARD

Plainly audible sound is usually defined in local ordinances to mean sound that can be heard by an officer using his or her normal hearing facilities at a specified distance from the source of the sound. In the case of State v. Catalano, 104 So.3rd 1169 (Fla. 2011), the Florida Supreme court held that the prohibition of sound that is "plainly audible" was not an unconstitutionally vague standard for determining whether a sound ordinance violation exists. An ordinance that is unconstitutionally vague is either an ordinance that (1) fails to give a person of common and ordinary intelligence fair and adequate notice of the conduct that is prohibited by the ordinance; or an ordinance that (2) lacks objective enforcement standards, thereby inviting arbitrary enforcement.

Since the Catalano case was decided, many Florida local governments have amended their sound ordinances to make use of the plainly audible standard in certain situations. That is, these ordinances typically provide that "plainly audible" sound within a certain number of feet from the source of the sound between certain designated times is prohibited. The idea is that the sound can still be made or played if individuals on the sound generating property want to hear it, but during certain hours, the sound cannot be audible to individuals on sound receiving properties within a specified distance of the sound source. After Catalano, the City of Sarasota made use of the plainly audible standard as well, but only in limited situations involving mechanical or electronic sound making devices. This was done in 2013 in response to the problem of automobiles traveling through north Sarasota during night time hours with occupants playing loud music from mechanical sound making devices depriving residents of sleep. The use of the plainly audible standard for determining a violation of the sound ordinance could be expanded and used as a replacement for the maximum decibel level standard within certain designated hours in other situations. For example, the sound ordinance could be amended to state that stationary outdoor source sound that is plainly audible at a specified distance from the source in any direction after a certain hour is prohibited. This would obviate the need to measure the decibel level of the sound after a certain hour. If the Sound Ordinance were amended to make greater use of the plainly audible standard, this might make the ordinance easier to understand and enforce in certain situations.

However, it is important to note that the Catalano case also held that the Florida Statute prohibiting "plainly audible" sound emanating from electronic sound making devices within motor vehicles was unconstitutionally overbroad. An ordinance could be open to a challenge of being unconstitutionally overbroad if it regulated or prohibited more Constitutionally protected speech or expression than

was necessary to achieve the valid municipal purpose of the ordinance. *See, e.g.* Deegan v. City of Ithaca, 444 F.3d 135, 143 (2d Cir. 2006) So for example, if an ordinance prohibited outdoor source sound that is plainly audible at a certain distance from its source 24 hours a day and the purpose of the ordinance was to allow residents to peacefully sleep at night in their homes, the ordinance could conceivably be found unconstitutionally overbroad because it would regulate more constitutionally protected expression than necessary to achieve the purpose of the ordinance because most people do not sleep all day.. .

In the Catalano opinion, the Florida Supreme Court also considered certain regulations promulgated by the Division of Highway Safety and Motor Vehicles in its determination that the "plainly audible" standard for prohibiting noise was not unconstitutionally vague. These regulations contain a requirement that the officer issuing a citation have a "direct line of sight and hearing" to the source of the sound so that the source of the sound could be identified and distinguished from ambient sounds. These standards also provide that the primary means of detection of the sound should be by means of the officers auditory senses, so long as the officer's hearing is not enhanced by any mechanical device or hearing aid. Most of the ordinances using a "plainly audible" standard apply these rules for determining plainly audible sound as well.

In the event that the Commission directs that the sound ordinance be amended so as to make greater use of the plainly audible standard, the ordinance could still use maximum decibel levels as a means of regulating sound as well. A sound ordinance could possibly provide for three categories of prohibited excessive sound. The first category would be sound that exceeds specified maximum decibel limitations during specified hours. The second category of prohibited sound would be sound that is "plainly audible" at a specified distance from the source of the sound during specified hours. The third category or prohibited sound would be various sounds now called "unreasonable sounds" by Section 20-4 of the current ordinance. (The term "excessive sound" which is less subjective than "unreasonable sound" is currently preferred.) Some examples of this third category of prohibited sounds would include sounds from construction, unloading of equipment or materials and the use of power tools during specified hours. These are sounds that would be considered unreasonable by a reasonable person of normal sensibilities at particular times regardless of whether the sound exceeds specified decibel limits. This third category of excessive sounds should not include sounds that are subject to the protection of the First Amendment.

QUESTIONS PRESENTED:

1. Will the City Commission authorize the City Attorney to prepare an amendment to the Sound Ordinance that makes greater use of the "plainly audible" standard?
2. If the answer to question no. 1 is yes, will the City Commission authorize the City Attorney to consult with the City Manager and the Police Department and return with recommendations in this regard or does the City Commission have more specific direction at this time?

III. EXCEPTIONS BY PERMIT - SECTION 20-6

The Sound Control Ordinance currently contains a provision (Section 20-6) that enables a person (usually a sponsor of a special event) to apply for and obtain a temporary "one time" "special permit" to be allowed to exceed the maximum decibel limits set by the sound ordinance. The permit if issued, allows the maximum decibel limits that would otherwise apply to be exceeded on a temporary basis, which is usually during the course of a special event. Section 20-6 contains ten criteria or factors to be considered in determining whether this temporary exception permit should be issued. These permits are issued by the City's Special Events Office.

This section has sometimes been misunderstood to require that the sponsor of a special event that will have amplified music must obtain a sound permit. However, the sound ordinance does not require a "sound permit" or a "special permit" under Section 20-6 if the sound at the event will not exceed the maximum decibel limits of the ordinance. The sponsor of a special event is only required to obtain an exception permit pursuant to Section 20-6 if it is anticipated that the amplified sound at the special event will exceed the maximum decibel limits established by the sound ordinance. If the sound at the special event can stay below the applicable maximum decibel limitations, then no exception permit under Section 20-6 is needed.

Some citizens have asserted that Section 20-6 should be deleted from the sound ordinance. Others have asserted that certain conditions should be imposed on these permits such as limits on level and the duration of the sound or a "cut off" time for the sound. It is my opinion that these limits or conditions are authorized by the ordinance as it is presently written. However, it is also my understanding that the City Manager would like to seek more specific policy guidance from the City Commission regarding the application and enforcement of Section 20-6 of the Sound

Control Ordinance which authorizes the issuance of these special permits before providing further direction to staff.

QUESTIONS PRESENTED:

1. Does the City Commission have any general direction with regard to Section 20-6 as to conditions that might be appended to a special permit or as to other amendments?

2. Note: The City Manager may have further specific questions for the City Commission with regard to Section 20-6.

IV. JURISDICTION TO ENFORCE

The City of Sarasota has appointed a special magistrate who has jurisdiction under the City Code to conduct hearings regarding alleged violations of the City's sound ordinance. The Sarasota City Code provides that contested citations for violations of the sound ordinance shall be heard by the Special Magistrate rather than in County Court. [See, Section 2-309(8) City Code] However, when the City Code provision pertaining to the jurisdiction of the Special Magistrate was amended to give the Magistrate jurisdiction over alleged violations of the Sound Ordinance in the 1990's, the Sound Ordinance was not amended to be consistent with this provision. An internal conflict in the City Code is the result. Section 20-10 of the Sound Ordinance was not amended when enforcement jurisdiction was given to the Special Magistrate. This section still provides that contested citations for violations of the Sound Ordinance shall be referred to the Clerk of County Court contemplating that trials will be held in County Court. This likely explains why the Special Magistrate has not held hearings on alleged violations of the Sound Control Ordinance.

The issue is presented as to whether hearings over alleged violations of the Sound Ordinance should be held in County Court or before the Special Magistrate. Presently, the Sound Control Ordinance is enforced by law enforcement officers in the City Police Department. City code compliance inspectors do not typically issue citations for violations of the sound ordinance and do not possess sound meters to measure the volume of sound emanating from a particular location. Should the City Commission decide to move in the direction of referring all contested sound ordinance violations to the Special Magistrate, then Section 20-10 of the sound ordinance would have to be amended to delete the references to County Court.

Although law enforcement officers would still be called for complaints about violations of the Sound Ordinance (at least for the time being unless and until there were Code Compliance officers available), the officers would have to issue a Notice of Violation under Chapter 162 Florida Statutes (the Code Compliance statute) if they found a violation had occurred, rather than a Notice to Appear in County Court. It is my understanding that law enforcement officers can be authorized to issue a Notice of Violation under Chapter 162 to start the hearing process before the magistrate, but that code compliance officers cannot be authorized to issue a Notice to Appear in County Court. If hearings on violations were held before the Magistrate, it is reasonable to expect that both parties would be afforded more scheduling latitude and more hearing time and consequently would be better able to make a record for purposes of a potential appeal to Circuit Court.

QUESTION PRESENTED:

1. Does the City Commission have a preference whether the Sound Ordinance is enforced in County Court or by the Special Magistrate? Both a decision of the County Court Judge and a decision of the Magistrate are appealable to the Circuit Court, but the City has to follow one process or the other.

V. UNCONSTITUTIONAL PROHIBITIONS IN ZONING CODE

In Daley v. City of Sarasota, 752 So.2d 124 (Fla. 2nd DCA 2000), the appellate court held that "The City cannot absolutely ban all amplified sound in non-enclosed structures for certain hours each day regardless of its volume. The City may (only) regulate amplified sound subject to strict guidelines and definite standards closely related to permissible governmental interests." (See, Exhibit B) In 1997, the City Commission enacted Ordinance No. 97-4019 which prohibited all amplified sound in non-enclosed structures within the Commercial Business Newtown (CBN) zone district during specified hours each day *regardless of the decibel level produced and regardless of whether the sound was audible outside of the structure* (emphasis supplied). When this ordinance was challenged by Mr. Daley who owned a business in the CBN zone district, the City prevailed in the local Circuit Court, but did not prevail in the subsequent appeal to the Second District Court of Appeal where the court found the ordinance to be unconstitutionally overbroad.

So, in accordance with the Daley decision, the City cannot simply ban outdoor source amplified sound in a particular situation. This is because the right to play music, including amplified music, is protected under the First Amendment. See,

Ward v. Rock Against Racism, 491 U.S. 781, 788-90, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989); Saia v. New York, 334 U.S. 558, 562, 68 S.Ct. 1148, 92 L.Ed. 1574 (1948). (Holding that a city ordinance prohibiting the use of sound amplification devices in public places without permission from the Chief of Police and setting no standards for granting or denying permission is unconstitutional on its face because it constitutes a prior restraint on the right of free speech in violation of the First Amendment.) Nonetheless, the City still has a valid and substantial interest in protecting its citizens from unwelcome and excessive noise. Accordingly, the City may establish content neutral, reasonable time, place and manner regulations on sound protected by the First Amendment, which includes outdoor source amplified music.

There are two provisions which are not in the Sound Ordinance, but which are in the City of Sarasota Zoning Code, that appear to contravene the holding in the Daley case. These provisions are not currently being enforced, but they have not been removed from the Zoning Code. First, Section VII-602(f)(5) of the Zoning Code states that no amplified music or amplified entertainment shall be permitted at accessory outdoor restaurants. (Outdoor accessory restaurants are located on private property as distinguished from sidewalk cafes which operate by permit on public property.) Second, Section VII-904(15) of the Zoning Code states that no outdoor music shall be permitted in conjunction with accessory uses to a hotel, motel or private club. These two provisions have been a source of consternation because citizens who read them and are not aware of the law as stated in the Daley case become angry that these provisions are not being enforced by the City. (See, Exhibit C)

Sections VII-602(f)(5) and Section VII-904(15) should be removed from the Zoning Code. Entertainment and outdoor music at outdoor restaurants and in connection with accessory uses to hotels can be subject to regulations either by the Sound Ordinance or by alternative zoning regulations. (e.g. maximum decibel limits or prohibition of plainly audible sound within certain designated times) Additionally, certain accessory uses to a hotel require approval of an application for a major conditional use which would enable reasonable conditions to be placed on the proposed use, including outdoor music. However, consistent with the holding in the Daley case, outside source amplified sound should not be prohibited outright. But this type of sound can be limited via a lower maximum decibel standard within certain times or by a regulation providing that amplified outdoor source sound cannot be plainly audible a specified distance away from the property generating the sound within certain times.

The City has more latitude to regulate outside source sound within a permit area at a sidewalk café because unlike accessory uses to hotels and outdoor accessory restaurants, both of which operate on private property, a sidewalk café operates on public property subject to the issuance of a permit. Still, before the code is amended to carry out the prior direction of the City Commission that outdoor entertainment be permitted at sidewalk cafes, it is important that clarification be provided as to what, if any, sound control measures will be applied.

QUESTIONS PRESENTED:

1. Do Commissioners have any questions about the deletion of Sections VII-602(f)(5) and VII-904(15) from the Zoning Code?
2. Does the City Commission have any specific direction regarding the regulation of sound at outdoor accessory restaurants and outdoor sound in connection with accessory uses at hotels, motels, etc. or will the City Commission authorize staff to come back with any recommendations in this regard to be incorporated into the Sound Ordinance (and referenced in the Zoning Code)?
3. Does the City Commission have any specific direction regarding the regulation of sound at sidewalk cafes at this time or will the City Commission authorize staff to come back with recommendations in this regard to be incorporated into the Sound Ordinance (and referenced in the Sidewalk Café Ordinance)?

VI. DEFINITIONS UPDATE - SECTION 20-3

In my opinion, the Definitions section of the current Sound Ordinance could be updated in conjunction with any other amendments that the City Commission might direct to help make the ordinance more understandable and easier to follow. There is also an opportunity to provide references in some of the definitions as to where these defined terms are used in the context of the ordinance. Terms such as "A weighted sound" and "C weighted sound" are not fully explained or defined. If the use of the term "impulsive source sound" is to be continued, then that term could be defined as well. If the "plainly audible" standard is going to be utilized in the ordinance and applied to sound from a stationary source (as opposed to sound coming from a moving vehicle), then the definition of plainly audible should be revised and updated. Also, the term "sound level meter" has become obsolete and should be updated. These examples are intended to be illustrative rather than exclusive.

QUESTION PRESENTED:

1. If other amendments to the Sound Ordinance are authorized, will the City Commission authorize the City Attorney to make recommended revisions to the Definitions section of the ordinance to be brought back for consideration?

VII. SEPARATE STANDARD FOR RESIDENTIALLY ZONED PROPERTY

The City of Sarasota has adopted decibel limitations that apply uniformly throughout the entire City. Other jurisdictions have adopted separate standards for areas zoned exclusively residential. Several years ago, we had the opportunity to speak with a consultant engaged by SPD for advice regarding sound meters about this distinction. The consultant advised that Sarasota's maximum decibel levels for sound were generally consistent with limits set by other jurisdictions for "mixed use" areas. Although the consultant agreed that the City's current decibel limits are higher than most limits established for exclusively residential areas, he felt that they were in line with limits set by other jurisdictions to apply in commercial and mixed use areas.

In other jurisdictions, when a residential area abuts a commercial area, sometimes a buffer zone is created where the residential sound standards (i.e. limits) apply for a specific distance in the adjacent commercial area. However, downtown Sarasota is zoned and developed for "urban mixed use" without clear lines of delineation between residential and non-residential development. This presents what the consultant called a "difficult situation" when it comes to noise regulation. Still, it would be possible to consider adopting different, presumably lower maximum decibel limits to apply in residentially zoned areas or when sound receiving property is residentially zoned, especially after a certain specified time in the evening.

QUESTION PRESENTED

1. Is the City Commission interested in receiving additional information at a future date regarding how other jurisdictions differentiate between regulations that apply when the sound receiving property is residentially zoned and when the receiving property is non-residentially zoned?

IX. SOUND FROM MOTOR VEHICLES (Modified exhaust systems, etc.)

Operation of a motor vehicle in such a manner as to generate a sound level in excess of specified decibel limits is a violation of Section 316.293(2) Florida Statutes. Likewise, the operation of a motor vehicle with an exhaust system or noise abatement device modified in such a manner that the noise emitted by the motor vehicle is above that emitted by the vehicle as originally manufactured is a violation of Section 316.293(5) Florida Statutes. Counties and municipalities in Florida are prohibited from enacting or enforcing any ordinances on matter covered by these statutes unless expressly authorized by statute. (See, Section 316.007 Florida Statutes) (Referenced Florida Statutes are found in Exhibit D) However, local law enforcement officers are authorized to enforce these statutes. But to the best of my knowledge, there is no explicit statutory authorization for the City to adopt ordinances to regulate this conduct.

However, Section 20-4(a)(2j) of the Sound Ordinance does prohibit "rapid throttle advance (revving) of an internal combustion engine on the public right of way resulting in an increased sound from the engine for the purpose of drawing attention to the source of the sound." The sound produced by this activity is declared to be "unreasonable sound" and violates the Sound Ordinance regardless of the decibel level of the sound.

X. OTHER ISSUES

There have also been emails and calls from citizens regarding certain other sounds that are either not specifically addressed by the Sound Ordinance or that are exempted from the provisions of the Sound Ordinance. Sounds in the former category (not addressed in the ordinance) include sound from leaf blowers. Sounds in the later category (exempted from regulation) include sound from air conditioning units (which are exempted only when functioning in accordance with the manufacturer's specifications and in proper operating condition) and from church bells and carillons. Sounds exempted from the Sound Ordinance are listed in Section 20-7 of the ordinance. Because of the length of this memorandum and the number of items already covered and because of these issues have been raised less often than most of the topics referred to above, I will not discuss any of these items in further detail. However, these sounds and others not discussed above may be raised by Commissioners or by the general public in the course of the general discussion regarding potential amendments to the Sound Ordinance.

/lg

Exhibit "A"

CURRENT CITY ORDINANCE

Sarasota, Florida, Code of Ordinances >> PART II - THE CODE >> **Chapter 20 SOUND REGULATIONS**
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Chapter 20 SOUND REGULATIONS^[1]

CURRENT SOUND REGULATIONS

Sec. 20-1. Short title.

Sec. 20-2. Declaration of policy.

Sec. 20-3. Definitions.

Sec. 20-4. Unreasonable sound prohibited.

Sec. 20-5. Maximum sound levels.

Sec. 20-6. Exceptions by permit.

Sec. 20-7. Exemptions.

Sec. 20-8. Warning and penalty.

Sec. 20-9. Violations; remedies.

Sec. 20-10. Proceedings and penalties for citations.

Sec. 20-11. Refusal to sign and accept citation.

Sec. 20-1. Short title.

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

(Ord. No. 03-4416, § 1, 3-3-03)

Sec. 20-2. 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. 03-4416, § 1, 3-3-03)

Sec. 20-3. 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's, 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."

Citation means a written notice, issued to a person by an officer who has probable cause to believe that the person has committed a civil infraction in violation of a duly enacted ordinance and that the county court will hear the charge. The citation shall contain:

- (1) The date and time of issuance;
- (2) The name and address of the person;
- (3) The date and time the civil infraction was committed;
- (4) The facts constituting probable cause;
- (5) The ordinance violated;
- (6) The name and authority of the officer;
- (7) The procedure for the person to follow in order to pay the civil penalty or to contest the citation, or to appear in court if a court appearance is mandatory;
- (8) The applicable civil penalty if the person elects to contest the citation;
- (9) The applicable civil penalty if the person elects not to contest the citation;
- (10) A conspicuous statement that if the person neither pays the civil penalty nor contests the citation within thirty (30) days after issuance of the citation, he/she shall be deemed to have waived his/her right to contest the citation and that, in such case, the county court shall enter judgment against the person in the amount of the citation, plus court costs, recording fees, and all surcharges required by this article.

City manager means the city manager of the city of 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 twenty (20) times the logarithm to the base ten (10) 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.

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, the Sarasota-Bradenton Airport Authority and the School Board of Sarasota County.

Holiday means those days designated pursuant to the city's personnel rules and regulations, Rule 10.1, Authorized Holidays.

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.

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.

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 (3) 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.

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.

Officer means any City of Sarasota code enforcement officer or sworn law enforcement officer employed by the City of Sarasota Police Department.

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.

Plainly audible shall mean any sound produced by a radio, tape player, compact disc player, loudspeaker, or other mechanical or electronic sound-making device, or instrument, including sound produced by a portable sound-making device, that can be clearly heard by a officer using his normal hearing faculties at a distance of fifty (50) feet or more from the source.

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 multi-dwelling-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.

Special master means the code enforcement special master or masters appointed by the city commission pursuant to chapter 2, article v, division 5, of the City Code.

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 out in the zoning code of the city, as amended, or other ordinances or resolutions duly adopted by the city commission.

(Ord. No. 03-4416, § 1, 3-3-03; Ord. No. 13-5052, § 1, 3-18-13)

Sec. 20-4. Unreasonable sound prohibited.

- (a) Notwithstanding the fact that no violation of section 20-5 is involved:
- (1) It shall be unlawful for a person to 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 are declared to be unreasonable sound in violation of this chapter:
 - a. *Mechanical or electronic sound-making devices or instruments not within or upon motor vehicles.* Operating or amplifying the sound produced by a radio, tape player, compact disc player, loudspeaker, or other mechanical or electronic sound-making device or instrument, including sound produced by a portable sound-making device, so that the sound is plainly audible at a distance of fifty (50) feet or more from the source of the sound between the hours of 10:00 p.m. and 7:00 a.m. on Sunday nights through Friday mornings, and between 10:00 p.m. and 10:00 a.m. on Friday nights through Sunday mornings. This subsection shall not include sound emanating from a sound-making devices or instruments within or upon motor vehicles, which is governed by section 20-4(a)(2)b.
 - b. *Mechanical or electronic sound-making devices or instruments within or upon motor vehicles.* Operating or amplifying the sound produced by a radio, tape player, compact disc player, loudspeaker, or other mechanical or electronic sound-making device or instrument, including sound produced by a portable sound-making device, from within the interior or upon the exterior of a motor vehicle so that the sound is plainly audible at a distance of fifty (50) feet or more from the source of the sound between the hours of 10:00 p.m. and 7:00 a.m. on Sunday nights through Friday mornings, and between 10:00 p.m. and 10:00 a.m. on Friday nights through Sunday mornings.

- c. *Street sales.* Offering for sale, selling anything or advertising by shouting or outcry.
- d. *Animals.* Owning, possessing, harboring, keeping, raising or maintaining any animal, as defined in chapter 8; which frequently or for continued duration howls, barks, yelps, meows, squawks, 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.
- e. *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 10:00 a.m. on weekends and holidays in or within fifty (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.
- f. *Construction and demolition.* Engaging in construction, drilling, repair, alteration, demolition, land clearing or landfilling operations between the hours of 9:00 p.m. and 6:00 a.m. on weekdays or between 9:00 p.m. and 9:00 a.m. on weekends or holidays except for emergency work by a public service utility or by other permit approved by the city. This subsection shall not apply to the use of domestic power tools as specified in paragraph j.
- g. *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 10:00 a.m. on weekends or holidays in or within fifty (50) yards of any residential real property line or noise sensitive area.
- h. *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 sixty (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 sixty-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 fifteen (15) minutes of activation shall be prohibited.
- i. *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.
- j. *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) In determining whether a sound is plainly audible, law enforcement personnel shall be entitled to measure the sound according to the following standards:
- (1) The primary means of detection shall be by means of the officer's ordinary auditory senses, so long as the officer's hearing is not enhanced by any mechanical device, such as a microphone or hearing aid.
 - (2) The officer must have a direct line of sight and hearing to the motor vehicle producing the sound so that he/she can readily identify the offending motor vehicle and the distance involved.
 - (3) The officer need not determine the particular words or phrases being produced or the name of any song or artist producing the sound. The detection of a rhythmic bass reverberating type sound is sufficient to constitute a plainly audible sound.
- (c) 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. 03-4416, § 1, 3-3-03; Ord. No. 13-5052, § 2, 3-18-13)

Sec. 20-5. 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 in decibels.*

- (1) Amplified sound not in a completely enclosed building. Section 20-5(b)(2) of this Code notwithstanding:
 - a. 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 sixty-five (65) dBA, seventy (70) dBC or has a five (5) dB or greater difference between the dBA and dBC sound levels.
 - b. The provisions of subsection a. above shall apply between the hours of 11:00 p.m. and 7:00 a.m. the following morning on Thursday through Sunday nights and between the hours of 11:59 p.m. and 7:00 a.m. the following morning on Friday and Saturday nights and on nights before federal holidays for amplified sound emanating from the city owned leasehold property on the Lemon Avenue Mall.
- (2) Continuous source.
 - a. Between the hours of 7:00 a.m. and 11:00 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 seventy-five (75) dBA, eighty (80) dBC or has a ten (10) dB or greater difference between the dBA and dBC sound levels.
 - b. Between the hours of 11:00 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 seventy-five (75) dBA, seventy-five (75) dBC or has a ten (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 subsection (b) shall apply.

(Ord. No. 03-4416, § 1, 3-3-03; Ord. No. 10-4905, § 1, 2-16-10)

Sec. 20-6. Exceptions by permit.

- (a) A person may seek a temporary exemption from the provisions of this chapter by seeking a special permit from the city manager. A fully complete special permit application must be submitted, on a form provided by the city manager. 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 manager may adopt administrative rules, as he or she deems necessary, to implement the provisions of this section.
- (b) In determining whether a special permit shall be issued, the city manager 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) The city manager shall grant or deny an application for a special permit within fifteen (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 manager 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.
- (1) An appeal of a decision of the city manager may be made by the applicant, in writing filed with the city auditor and clerk, within seven (7) days of the rendition of the decision, to the special master for a hearing de novo. A decision of the city manager shall be deemed to have been rendered on the date of a letter prepared by the city manager notifying the applicant of the decision of the city manager.
 - (2) The special master assigned to hear the appeal shall conduct a hearing thereon within ten (10) days of the filing of the notice of appeal, and shall make a final administrative decision, based upon the limitations and criteria set forth in sections 20-6(a) and (b), within three (3) days thereafter. In addition, the special master shall consider the administrative rules, if any, adopted by the city manager pursuant to section 20-6(a).
 - (3) The special master shall make findings of fact that the criteria set forth in section 20-6(b) have or have not been satisfied by the applicant for a special permit.
 - (4)

In the event the special master grants the appeal, the special permit issued thereby shall be issued for a specified limited period of time and shall set forth such conditions or requirements as shall be deemed necessary by the special master to mitigate potential adverse effects upon neighboring properties and to otherwise ensure that the public health, safety and general welfare is protected.

- (5) Action taken by the special master to grant or deny the appeal shall be documented in a final order. The final order shall be filed with the city auditor and clerk.
- (6) An appeal of the decision of the special master may be made to the circuit court for the county, by filing a petition for writ of certiorari as provided for under the Florida Rules of Appellate Procedure. A decision of the special master shall be deemed to have been rendered on the date the final order is filed with the city auditor and clerk.
- (f) Any violation of any conditions imposed upon the granting of the special permit shall be deemed a violation of this chapter.

(Ord. No. 03-4416, § 1, 3-3-03)

Sec. 20-7. Exemptions.

The provisions of this chapter shall not apply to:

- (1) Sound made by a horn or other warning device required or permitted by F.S. 316.271;
- (2) Sound produced by a motorboat regulated pursuant to F.S. 327.65.
- (3) Air conditioners when functioning in accord with the manufacturer's specifications and with all manufacturers' mufflers and sound-reducing equipment in use and in proper operating condition;
- (4) Non-amplified crowd sounds resulting from otherwise lawful public gatherings;
- (5) Construction, drilling, repair, alteration, demolition, land clearing or landfilling operations between the hours of 6:00 a.m. and 9:00 p.m. on weekdays or between 9:00 a.m. and 9:00 p.m. on weekends 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;
- (6) Operation of any powered model vehicle between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and 10:00 a.m. and 7:00 p.m. on weekends or holidays in or within fifty (50) 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;
- (7) 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 section 20-4(a)(2)i.;
- (8) 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;
- (9) Sound resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of an emergency;
- (10)

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;

- (11) The normal operations of railroad trains;
- (12) Motor vehicles and vessels when functioning with all manufacturers' mufflers and noise-reducing equipment in use and in proper operating condition;
- (13) Sound resulting from emergency work;
- (14) Church bells and carillons;
- (15) Governmental agency or governmental agency contractor road construction equipment and related activities;
- (16) Amplified sound on property controlled by a governmental agency during governmental sponsored activities;
- (17) Common carrier stations, including but not limited to bus stations, commercial docks and airports;
- (18) Sound produced by activities in the fields, grounds or facilities of any sporting venue to which the public or community has access;
- (19) Sound made by children and adults on public or private schools and athletic grounds located thereon, during school curricular or extra-curricular activities;
- (20) 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;
- (21) 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. 03-4416, § 1, 3-3-03; Ord. No. 13-5052, § 3, 3-18-13)

Sec. 20-8. Warning and penalty.

- (a) When a law enforcement officer has probable cause to believe that a violation of this chapter 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) Violations of section 20-4(a)(2)b. ("mechanical or electronic sound-making device or instruments within or upon motor vehicles") or section 20-4(a)(2)j. ("internal combustion engines"):
 - (1) Due to the transient and itinerant nature of violations involving unreasonable sound emanating from motor vehicles, when the violator is the driver, owner, or possessor of the motor vehicle and as such has immediate access to the sound-making device causing unreasonable sound in violation of this chapter, one (1) minute shall be presumed reasonable time to comply and cease any violation.
 - (2) If the violation is not eliminated within a reasonable time after the warning as prescribed in this section or the violation recurs within one (1) year 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, upon conviction, shall be subject to prosecution under the provisions of section 20-9.

- (c) Violations of this chapter other than sections 20-4(a)(2)b. and 20-4(a)(2)j.:
 - (1) Absent special circumstances, fifteen (15) minutes shall be presumed reasonable time to comply and cease any violation.
 - (2) If the violation is not eliminated within a reasonable time after the warning as prescribed in this section or the violation recurs within ninety (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, upon conviction, shall be subject to prosecution under the provisions of section 20-9.

(Ord. No. 03-4416, § 1, 3-3-03; Ord. No. 13-5052, § 4, 3-18-13)

Sec. 20-9. Violations; remedies.

- (a) *Violations.*
 - (1) For violations of this chapter which involve noise emanating from a motor vehicle, specifically, section 20-4(a)(2)b. ("mechanical or electronic sound-making device or instruments within or upon motor vehicles") or section 20-4(a)(2)j. ("internal combustion engines"):
 - a. *First violation.* The first violation is a civil infraction punishable by a fine of \$250.00. The officer shall issue a citation to the violator. The violator is not subject to arrest or incarceration unless the violator willfully refuses to sign and accept the citation, as described in section 20-11.
 - b. *Second violation.* The second violation is a civil infraction punishable by a fine of \$500.00. The officer shall issue a citation to the violator. The violator is not subject to arrest or incarceration unless the violator willfully refuses to sign and accept the citation, as described in section 20-11.
 - c. *Third or subsequent violations.* For third or subsequent violations, the punishment is as provided by section 1-11. An officer is authorized to arrest a violator or issue the violator a notice to appear at the officer's discretion.
 - (2) For violations of this chapter which involve unreasonable sound other than described within sections 20-4(a)(2)b. and 20-4(a)(2)j., as provided in section 1-11.
- (b) *Additional remedies.* No provision of this chapter 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 competent jurisdiction for injunction, both temporary and permanent.

(Ord. No. 03-4416, § 1, 3-3-03; Ord. No. 13-5052, § 5, 3-18-13)

Sec. 20-10. Proceedings and penalties for citations.

- (a) A person cited for a civil infraction may contest the citation in the county court.
- (b) In any contested hearing authorized pursuant to this section, a violation must be proven by beyond a reasonable doubt.
- (c) The maximum civil penalty for any infraction is five hundred dollars (\$500.00).

- (d) If a person elects not to contest the citation in county court, the civil penalty shall be one hundred dollars (\$100.00) for a first or second offense. The violator shall pay the applicable civil penalty to the clerk of the county court within thirty (30) days after issuance of the citation.
- (e) If the violator elects to contest the citation, he/she shall request a hearing through the clerk of the county court within thirty (30) days after issuance of the citation. The clerk shall schedule a hearing in the county court and shall provide written notice of the hearing to the violator and the officer who issued the citation.
- (f) If, within thirty (30) days after issuance of the citation, the violator neither pays the civil penalty nor contests the citation, he/she shall be deemed to have waived his right to contest the citation and, in such case, the county court shall enter a judgment against the violator in the amount of the citation, plus court costs, recording fees, and all surcharges required by this section.
- (g) All civil fines and penalties shall be deposited into the city general fund.

(Ord. No. 13-5052, § 6, 3-18-13)

Sec. 20-11. Refusal to sign and accept citation.

Any person who willfully refuses to sign and accept a citation issued by an officer shall be guilty of a misdemeanor of the second degree, pursuant to F.S. § 162.21(6), punished as provided in F.S. §§ 775.082 and 775.083.

(Ord. No. 13-5052, § 7, 3-18-13)

FOOTNOTE(S):

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Editor's note—Ord. No. 03-4416, adopted March 3, 2003, amended the Code by repealing ch. 20, §§ 20-1—20-8, and adding a new ch. 20. The former sections pertained to noise control and derived from Ord. No. 97-3994, § 1, adopted April 19, 1997; Ord. No. 97-4024 § 1, adopted December 15, 1997 and Ord. No. 99-4163, adopted April 17, 2000. [\(Back\)](#)

Cross reference—Penalty, § 2-320; aircraft and airports, ch. 3; alarm systems, ch. 4; barking and howling dogs, § 8-7; noisy fowl, § 8-44; health and sanitation, ch. 17; pollution, ch. 27; hawking, shouting, etc., from newsstands, § 30-102; traffic and motor vehicles, ch. 33. [\(Back\)](#)

State Law reference—Motor vehicle noise, F.S. § 403.415. [\(Back\)](#)

Exhibit "B"

752 So.2d 124 (2000)

Arthur F. DALEY, Petitioner,
v.
CITY OF SARASOTA, Respondent.

No. 2D99-2740.

District Court of Appeal of Florida, Second District.

March 8, 2000.

Mark A. Gruwell, Sarasota, for Petitioner.

Michael S. Perry of Taylor, Lawless and Singer, P.A., Sarasota, for Respondent.

PER CURIAM.

Petitioner Arthur F. Daley ("Daley") seeks certiorari review of a decision of the circuit court, sitting in its appellate capacity, which reversed a county court order declaring unconstitutional as overly broad a portion of a noise ordinance enacted by the respondent, City of Sarasota (the "City"). We conclude that the circuit court departed from the essential requirements of law in finding the challenged portion of the ordinance to be "narrowly tailored to achieve the legitimate interest in regulating unreasonable sound" and in *125 concluding that Daley's challenges to the noise ordinance were not "real and substantial." We accordingly issue the writ and quash the order under review.

The City enacted ordinance number 97-4019, which created, among other things, section 8-322.1(a) of the Sarasota Zoning Code. The portion of the ordinance challenged in this proceeding prohibits all amplified sound in nonenclosed structures in the area zoned Commercial Business-Newtown (CBN), during certain hours of each day, regardless of the decibel level of the sound being produced and regardless of whether the sound is audible outside the structure. The challenged portion of the ordinance provides:

Amplified sound prohibited: Amplified sound not in a completely enclosed structure is prohibited between the hours of 10:00 p.m. and 7:00 a.m. the following morning on Sunday through Thursday, inclusive, except the day prior to a holiday, or between the hours of 11:59 p.m. and 10:00 a.m. the following morning, on Friday, Saturday, and the day prior to a holiday. This section shall not apply to structures or portions thereof used primarily for residential purposes.

"Amplified sound" is defined as the "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." "Amplified" is defined as "to increase the strength, amount of or loudness of a device." The ordinance defines "completely enclosed building" instead of "completely enclosed structure" and requires all doors and windows of a business to remain closed, except for normal ingress and egress.

A temporary exemption from the ordinance can be obtained by a person who secures a specially limited permit from the city manager for community events or programs, construction, and demolition. A fairly long list of permanent exemptions includes noise from fire or burglar alarms, emergency sirens, church bells, cellular telephones, automobile sound equipment, and motorboats, as well as noncommercial public speaking covered by a different section of the City Code.

Daley owns a business within the district zoned CBN. He entertains his customers with both live band performances and recorded music. After receiving two citations for violating the amplified sound prohibition in

the ordinance, Daley filed a motion in the county court to declare the City's noise ordinance unconstitutional. After a hearing the judge granted the motion, declaring the ordinance unconstitutional as overly broad and dismissing the citations against Daley.

The City appealed to the circuit court, which found that the ordinance was "narrowly tailored to achieve the legitimate interest in regulating unreasonable sound" and reversed the county court's order. The circuit court further described Daley's challenges to the noise ordinance as "hypothetical examples" and not "real and substantial overbreadth challenge[s]." Citing to Secretary of State of Maryland v. Joseph H. Munson Co., Inc., 467 U.S. 947, 964, 104 S.Ct. 2839, 81 L.Ed.2d 786 (1984), the circuit court found that any prosecution that might occur based on Daley's hypotheticals could be analyzed either by a limiting construction or an "as applied" constitutional standard. Our review of the ordinance and the applicable cases convinces us that, in coming to these conclusions, the circuit judge departed from the essential requirements of law by applying the incorrect law. See Haines City Community Dev. v. Heggs, 658 So.2d 523, 530 (Fla.1995).

"Music, as a form of expression and communication, is protected under the First Amendment." Ward v. Rock Against Racism, 491 U.S. 781, 790, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989). This protection extends to

126 amplified music. *126 The United States Supreme Court recognized in Saia v. New York, 334 U.S. 558, 68 S.Ct. 1148, 92 L.Ed. 1574 (1948), that the use of sound amplification equipment within reasonable limits is an aspect of free speech protected by the First Amendment. Furthermore, the mere existence of an alternative means of expression, such as unamplified speech, will not by itself justify a restraint on the particular means that the speaker finds more effective. See Reeves v. McConn, 631 F.2d 377, 382 (5th Cir.1980).

By enacting this ordinance, the City has sought to regulate protected free speech in a public forum. The government can constitutionally restrict such expression, even in a public place, if the limitations on the time, place, and manner of the protected speech are reasonable. The restrictions must be "justified without reference to the content of the regulated speech, ... [be] narrowly tailored to serve a significant governmental interest, and... leave open ample alternative channels for communication of the information." Ward, 491 U.S. at 791, 109 S.Ct. 2746 (quoting Clark v. Community for Creative Non-Violence, 468 U.S. 288, 104 S.Ct. 3065, 82 L.Ed.2d 221 (1984)).

The circuit court in this case found that the City had a legitimate interest in regulating "unreasonable" sound and its ordinance was "narrowly tailored" to achieve that interest. The City's ordinance, however, is not limited to prohibiting "unreasonable" sound. Instead, it prohibits all amplified sound emanating from incompletely enclosed structures within the district zoned CBN, during certain hours of each day, regardless of the volume of that sound and regardless of whether that sound can be heard outside of the structure.^[1]

The goal of regulating unreasonable sound is unquestionably a matter within the City's province. However, that goal, no matter how laudable, cannot be achieved by the overbroad regulation of activities protected by the First Amendment. As currently written, the City's ordinance can be used to suppress First Amendment rights far more severely than can be justified by the City's interest in regulating unreasonable sound. See Saia, 334 U.S. at 562, 68 S.Ct. 1148; C.C.B. v. State, 458 So.2d 47, 49 (Fla. 1st DCA 1984).

The requirement of real and substantial overbreadth applies primarily "where conduct and not merely speech is involved." Broadrick v. Oklahoma, 413 U.S. 601, 615, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973). Here, of course, the City's noise ordinance is concerned primarily with regulating forms of speech and not conduct. Moreover, the "real and substantial" requirement is appropriate "in cases where, despite some possibly impermissible application, the 'remainder of the statute... covers a whole range of easily identifiable and constitutionally proscribable... conduct.'" Munson, 467 U.S. at 964, 104 S.Ct. 2839 (quoting United States Civil Serv. Comm'n v. National Ass'n of Letter Carriers, 413 U.S. 548, 580-81, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973)). That is not the case here. The challenged portion of the City's noise ordinance does not contain a core of easily identifiable and proscribable conduct that it prohibits. Instead, it indiscriminately bans all amplified sound that

does not emanate from a completely enclosed structure, during certain hours of each day, regardless of its volume.

The City's ordinance is flawed not simply because it sanctions some constitutionally-protected conduct, but because it is founded upon the mistaken premise that all amplified sound in nonenclosed structures is unreasonable during certain hours of the day and can be prohibited regardless¹²⁷ of the First Amendment rights it suppresses. It is therefore subject to facial attack. See Munson, 467 U.S. at 964, 104 S.Ct. 2839.

127 The City asserts that a limiting construction can be placed on the ordinance's application to avoid a finding of overbreadth if it is restricted to the prohibition of amplified commercial speech only. Imposing such a limitation, however, would not cure the constitutional infirmity. A blanket ban on all amplified commercial speech not emanating from within an enclosed structure during certain hours of each day, regardless of its volume, would still extend too far. See Beckwith v. Department of Bus. & Prof'l Regulation, Bd. of Hearing Aid Specialists, 667 So.2d 450, 451 (Fla. 1st DCA 1996).

City ordinance number 97-4019 is unconstitutional because it curbs First Amendment rights in a manner more intrusive than necessary. The City cannot absolutely ban all amplified sound in nonenclosed structures for certain hours each day regardless of its volume. The City may regulate amplified sound subject to strict guidelines and definite standards closely related to permissible governmental interests. Although the drafting of such an ordinance is a task for the City and not for this court, see C.C.B., 458 So.2d at 50, we note that any such regulation must be sufficiently definitive as to secure against arbitrary enforcement. See Easy Way of Lee County, Inc. v. Lee County, 674 So.2d 863, 866 (Fla. 2d DCA 1996).

We accordingly issue the writ and strike the challenged portion of City ordinance 97-4019. The order of the circuit court is quashed.

CAMPBELL, A.C.J., and CASANUEVA and DAVIS, JJ., Concur.

[1] We point out that in the absence of any objective criteria, such as decibel limitation, unamplified sound greater in volume than amplified sound is permissible under the ordinance.

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Exhibit "C"

(3) Must be completely enclosed by an eight foot high, completely opaque fence or wall constructed of wood or finished masonry.

- * (f) *Accessory outdoor restaurants.* The outdoor restaurant regulations as established in these regulations have city-wide applicability, are designed to encourage outdoor restaurants in commercial areas, to promote and protect public health, safety, and general welfare and to provide for the creation of a more urban pedestrian environment. Outdoor restaurants shall be constructed and operated in the following manner:

(1) If the outdoor restaurant is on a side of the building adjacent to residentially zoned property, then the outdoor restaurant, regardless of floor level, shall be separated by an intervening building or six and one-half foot high masonry wall without windows along all side(s) of the outdoor restaurant that are adjacent to the residentially zoned property. No variance from this requirement may be granted. Notwithstanding the foregoing, the approving authority may allow the materials comprising the buffer wall to be other than masonry, and may approve the use of a window so long as it remains fixed or remains fully closed within the buffer wall. In such instances, the approving authority shall make a finding that such change in materials will protect the adjacent residentially zoned property(s) from potentially adverse impacts of the outdoor dining activity.

(2) If the outdoor restaurant is located on a side(s) of a building adjacent to non-residentially zoned property or a public right-of-way, it shall be separated on that side(s) of the building from the non-residentially zoned property and/or public right-of-way by either a building or a two foot high enclosure. The enclosure may consist of plants, planters, fences or walls.

(3) The exterior of the wall(s) required in subsections (1) and (2) above shall be finished in a manner considered appropriate to the materials used.

(4) All patrons of the outdoor restaurant shall vacate the outdoor restaurant no later than 11:00 p.m. on Sunday through Thursday, inclusive, except the day prior to a holiday, and 11:59 p.m. on Friday, Saturday and the day prior to a holiday. Provided, however, if the outdoor restaurant is located within 120 feet of residentially zoned property, as measured in a straight line from the nearest property boundary of the residentially zoned property, the patrons shall vacate the outdoor restaurant no later than 11:00 p.m., seven days per week. Notwithstanding the foregoing, stricter hours of operation may be established by the approving authority. In such instances, the approving authority shall make a finding that said more stringent restriction is necessary to mitigate potential impacts from the outdoor restaurant to the residentially zoned property.

- * (5) No amplified music or amplified entertainment shall be permitted.

(g) *Child care and family day care facilities.* Child care and family day care facilities must be constructed and operated in the following manner:

(1) Outdoor play areas shall not be located in required front setbacks.

(2) Outdoor play areas shall be enclosed with a minimum four foot high fence.

(3) No outdoor play activities shall be conducted before 8:00 a.m. or after 8:00 p.m.

(4) For child care facilities, a landscape bufferyard type C, in accordance with article VII, division 3, shall be provided between the outdoor play area and side and rear property lines abutting property zoned residential, unless the abutting property is used for a child care or family day care center.

(5) Buildings or structures shall have a minimum of 35 square feet per child of net floor space. Outdoor play areas shall provide a minimum of 100 square feet per child in any group utilizing the play area at one time. For child care centers with staggered outdoor playtimes, the minimum outdoor play area per child shall be calculated based upon one-half of the licensed capacity of the child care center.

(6) All facilities, operation and maintenance shall meet city, county and state requirements for operation of child care centers.

(h) *Commercial wireless telecommunication towers and antennas.*

(1) *Purpose.* In order to accommodate the communication needs of residents and business while protecting the public health, safety, and general welfare of the community, these regulations are necessary in order to:

a. Facilitate the provision of wireless telecommunication services to the residents and businesses of the city.

b. Minimize adverse visual impacts and effects of towers through the utilization of careful design, landscaping, screening,

Sec. VII-904. - Non-residential accessory uses, buildings and structures.

Accessory uses, buildings and structures shall be permitted in all office, commercial, production intensive commercial, mixed use, and open space recreation and conservation districts in accordance with the provisions of this section. Such uses and structures shall be located and designed so as to minimize any adverse impact on adjacent properties and streets and alleys.

- (1) Amateur radio antennas and their supporting structures shall be allowed only in accordance with section VII-602(h) of this Code.
- (2) Commercial wireless telecommunication antennas mounted on existing buildings shall be permitted, except the Conservation overlay district (COD) and Marine Park (MP) zone district, as an accessory use, and shall meet the standards as set forth in section VII-602(h) of this Code.
- (3) Commercial wireless telecommunication antennas mounted on existing towers shall be permitted, except the Conservation overlay district (COD) and Marine Park (MP) zone districts, as an accessory use, and shall meet the standards as set forth in section VII-602(h) of this Code.
- (4) Direct broadcast satellite service (DBS) antennas and Multi-channel multi-point distribution service (MMDS) antennas, in accordance with the standards set forth in section VII-602(h) of this Code, shall be permitted as an accessory use in all non-residential districts, except the Conservation overlay district (COD) and Marine Park (MP) zone districts.
- (5) One caretaker's accessory dwelling unit shall be permitted in accordance with the following requirements:
 - a. Such accessory dwelling unit shall only be used by the person/employee affiliated with the nonresidential use(s) on the zoning lot.
- (6) Home occupations shall be permitted as an accessory use to all residential uses and shall meet the standards as set forth in article VII, division 6, section VII-602(ff) of this Code.
- (7) Fences and walls, except those used in connection with a government use, shall be governed by the standards found in article VII, division 11.
- (8) Except as may be provided in other sections of this Code, no accessory building or structure shall exceed the height of the principal building on the zoning lot.
- (9) Where zoning lots within a office, commercial, production intensive commercial, mixed use, or open space recreation and conservation district are adjacent to a residential district, accessory uses and structures located in those yards that are adjacent to the residential district(s) shall not be allowed in a required front yard, and shall be setback a minimum of five feet from such rear and side property lines.
- (10) Seawalls, groins and other beach protection devices shall be permitted in accordance with

section VII-1304 of this Code.

- (11) Drive-through facilities may be allowed in all nonresidential zone districts as an accessory use in accordance with section VII-602(c), unless specifically prohibited.
- (12) Outdoor restaurants shall be permitted as an accessory use in accordance with section VII-602(f), unless specifically prohibited.
- (13) Non-profit bingo shall be permitted as an accessory use in accordance with section VII-602(w), unless specifically prohibited.
- (14) Nutritional counseling and food distribution services shall be permitted as an accessory use to an approved community services conditional use in any office, commercial, production intensive commercial, or mixed use district.
- * (15) The following accessory uses to a hotel or motel or private club may be allowed as a major conditional use, unless identified as a permitted use in a particular zone district: auditoriums, convention and meeting facilities; restaurants (indoor or outdoor); bars (indoor or outdoor); service oriented uses such as beauty and barber shops, laundry and dry cleaning pick-up stations, and travel agencies; commercial uses such as book, drug store, sundry, clothing, and gift shops; recreational facilities and non-motorized equipment rentals; private and commercial docks; and other similar accessory uses. No outdoor music shall be permitted in conjunction with such uses.
- (16) Specific accessory uses allowed in the SMH zone district. The following uses shall be allowed in the SMH zone district provided they are accessory to the permitted principal hospital facility. These uses shall primarily service the employees and patrons of the hospital facility and affiliated medical offices; however, casual or incidental use by the general public shall not be inconsistent with the intent of this requirement. In addition, a hotel/motel use may only be established by conversion of hospital patient rooms within hospital buildings existing as of March 20, 2000. Occupants of such accessory hotel/motel rooms shall be limited to families or persons attending to or visiting patients of Sarasota Memorial Hospital.

	Location anywhere in SMH district	Location anywhere in SMH district with restrictions (1)	Location only in principal hospital building (2)
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Exhibit "D"

Select Year: 2021

The 2021 Florida Statutes

[Title XXIII](#)
MOTOR VEHICLES

[Chapter 316](#)
STATE UNIFORM TRAFFIC CONTROL

[View Entire Chapter](#)

316.293 Motor vehicle noise.—

(1) DEFINITIONS.—The following words and phrases, when used in this section, shall have the meanings respectively assigned to them in this subsection, except where the context otherwise requires:

(a) “dB A” means the composite abbreviation for the A-weighted sound level and the unit of sound level, the decibel.

(b) “Gross combination weight rating” or “GCWR” means the value specified by the manufacturer as the loaded weight of a combination vehicle.

(c) “Gross vehicle weight rating” or “GVWR” means the value specified by the manufacturer as the loaded weight of a single vehicle.

(d) “Sound level” means the A-weighted sound pressure level measured with fast response using an instrument complying with the specification for sound level meters of the American National Standards Institute, Inc., or its successor bodies, except that only A-weighting and fast dynamic response need be provided.

(e) “Department” means the Department of Highway Safety and Motor Vehicles.

(2) OPERATING NOISE LIMITS.—No person shall operate or be permitted to operate a vehicle at any time or under any condition of roadway grade, load, acceleration, or deceleration in such a manner as to generate a sound level in excess of the following limit for the category of motor vehicle and applicable speed limit at a distance of 50 feet from the center of the lane of travel under measurement procedures established under subsection (3).

(a) For motorcycles other than motor-driven cycles:

Sound level limit		
Speed limit	Speed limit	
35 mph or less	over 35 mph	
Before January 1, 1979	82 dB A	86 dB A
On or after January 1, 1979	78 dB A	82 dB A

(b) For any motor vehicle with a GVWR or GCWR of 10,000 pounds or more:

Sound level limit		
Speed limit	Speed limit	
35 mph or less	over 35 mph	
On or after January 1, 1975	86 dB A	90 dB A

(c) For motor-driven cycles and any other motor vehicle not included in paragraph (a) or paragraph (b):

Sound level limit

Speed limit	Sound level Selected limit
35 mph or less	over 35 mph
Speed limit	Speed limit
35 mph or less	over 35 mph
Before January 1, 1979	76 dB A
On or after	82 dB A
January 1, 1979	79 dB A

(3) **MEASUREMENT PROCEDURES.**—The measurement procedures for determining compliance with this section shall be established by regulation of the Department of Environmental Protection as provided in s. 403.415(9), in cooperation with the department. Such regulations shall include the selection 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.

(4) **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 chapter relating to motor vehicle mufflers for noise control.

(5) **NOISE ABATEMENT EQUIPMENT MODIFICATIONS.**—

(a) 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 highways of this state in such a manner that the noise emitted by the motor vehicle is above that emitted by the vehicle as originally manufactured.

(b) No person shall operate a motor vehicle upon the highways of the state with an exhaust system or noise-abatement device so modified.

(6) **EXEMPT VEHICLES.**—The following are exempt from the operation of this act:

(a) Emergency vehicles operating as specified in s. 316.072(5)(a).
 (b) Any motor vehicle engaged in a professional or amateur sanctioned, competitive sports event for which admission or entry fee is charged, or practice or time trials for such event.

(c) Any motor vehicle engaged in a manufacturer's engineering, design, or equipment test.

(d) Construction or agricultural equipment either on a job site or traveling on the highways.

(7) **VIOLATIONS.**—A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

History.—s. 4, ch. 74-110; s. 32, ch. 76-31; s. 2, ch. 78-280; s. 28, ch. 79-65; s. 136, ch. 94-356; s. 16, ch. 97-300; s. 205, ch. 99-248.

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The 2021 Florida Statutes

[Title XXIII](#)
MOTOR VEHICLES

[Chapter 316](#)
STATE UNIFORM TRAFFIC CONTROL

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316.007 Provisions uniform throughout state.—The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized. However, this section shall not prevent any local authority from enacting an ordinance when such enactment is necessary to vest jurisdiction of violation of this chapter in the local court.

History.—s. 1, ch. 71-135; s. 2, ch. 71-982.

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