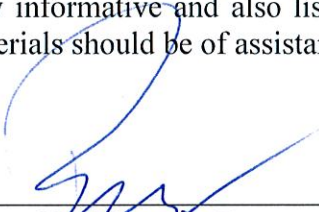


CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: R. Sean Baldwin, Chief of Police (*via email*)
FROM: Robert V. Schwerer, City Attorney
SUBJECT: Noise Ordinance 2013 Updates
DATE: August 8, 2013

I am attaching for your review a copy of the Noise Control Update that was presented at the July 2013 Florida Municipal Attorneys Association meeting we just attended. These materials are very informative and also list various source information including sample ordinances. These materials should be of assistance to staff in crafting the City's revised noise ordinance.



Robert V. Schwerer, Esq.
City Attorney

/mlp

Attachment

c: Fort Pierce Mayor and Commissioners
Robert J. Bradshaw, City Manager
Nicholas Mimms, Deputy City Manager (*via email*)
Peggy Arraiz, Code Compliance Manager (*via email*)
Karen Emerson, Assistant City Attorney (*via email*)



Noise Control Update

Hetal H. Desai, Assistant City Attorney, Tallahassee

LESSONS IN DRAFTING NOISE REGULATIONS IN FLORIDA

Hetal Desai, Assistant City Attorney, City of Tallahassee

STATE v. CATALANO – TOP TEN LESSONS

State v. Catalano, 104 So. 3d 1069 (Fla. 2012), affirming, 60 So. 3d 1139 (Fla. 2nd DCA 2011):

1. **Noise regulations are subject to the First Amendment.** Section 316.3045, Fla. Stat. (*Operation of radios or other mechanical soundmaking devices or instruments in vehicles; exemptions*), making it unlawful for any person operating a motor vehicle to amplify sound produced by a radio, or other sound making device or instrument that is plainly audible at a distance of 25 feet or more, or louder than necessary in areas adjoining churches, schools or hospitals.
2. **The right to play music, including amplified music, is protected by the U.S. Constitution.** See Ward v. Rock against Racism, 491 U.S. 781 (1989). In Ward, the Supreme Court upheld regulations on a band shell, noting noise ordinances that are content-neutral are constitutional because their purpose is to limit the volume of sound, not the content of the music.
3. **The government can regulate protected rights, such as the right to play music, with reasonable limits on time, place and manner.** The Court used the modern test used in Ward to review the noise regulation in section 316.3045.
 - a. Is the noise restriction content neutral?
 - b. Is it narrowly tailored to serve a significant governmental interest?
 - c. Does it allow ample alternative channels for communication or source sound?
4. **Subjective standards are not necessarily unconstitutionally vague.** The test is: Does a person of "average intelligence and understanding" have notice of what noise is prohibited? The "plainly audible at a distance of 25 feet" standard in the statute was not unconstitutionally vague. The court resolved a conflict between Davis v. State, 710 So. 2d 635 (Fla. 5th DCA 1998) (upholding pre-2005 amendment version of section 316.3045(1)(a), which required that amplified sound be plainly audible more than one-hundred feet from the vehicle, as not unconstitutionally vague), and Easy Way of Lee County, Inc. v. Lee County, 674 S.2d 863, 866 (Fla. 2nd DCA 2d 1996) (striking county's sound ordinance was vague and overbroad because of its "plainly audible" standard). Also see Montgomery v. State, 69 So. 3d 1023, 1032 (Fla. 5th DCA 2011) (holding section

316.3045(1)(a) is not unconstitutionally vague, but finding the statute unconstitutionally overbroad as an impermissible content-based restriction).

5. **An administrative regulation can save a vague statute.** Here, Florida Administrative Code Rule 15B-13.001, provided clear guidelines as to when a sound that was "clearly heard" by the officer and violated the statute.
 - a. The officer must have a direct line of sight and hearing to the motor vehicle.
 - b. The officer cannot use a microphone or hearing aid; must be using his or her normal auditory senses.
 - c. The officer does not have to determine particular words or phrases, or the name of any song or artist.
 - d. The detection of a rhythmic bass reverberating sound is sufficient.
 - e. The motor vehicle source of sound must be on a street or highway as defined, or a parking lot or driveway that is open to the public.
6. **Be wary of exceptions.** The exceptions in section 316.3045(3), for political and business vehicles and speech made the statute an impermissibly content-based regulation. Section 316.3045, did not apply to all amplified sounds; rather it made reference to commercial and political purposes.
7. **A content-based regulation requires strict scrutiny: a compelling state interest that is narrowly tailored to address that state interest.** Section 316.3045, was content based because it did not apply equally to music, political speech and advertising. The over-arching interest for the statute, traffic safety, was not a compelling interest. Moreover, the statute was overbroad and not narrowly tailored.
8. **A noise ordinance is overbroad if it restricts the freedom of expression in a manner that is more intrusive than necessary.** Section 316.3045, was unconstitutional because the government could offer no explanation of how commercial or political vehicles are less dangerous or more tolerable than non-commercial vehicles amplifying a religious message. See also Daley v. City of Sarasota, 752 S.2d 124 (Fla. 2nd DCA 2000) (finding local noise ordinance that prohibited all amplified noise that was not in a completely enclosed structure to be an unconstitutionally overbroad restriction on free speech; although the purpose of in regulating unreasonable sound was a significant interest it was more severe than necessary).
9. **Protecting the public from excessively loud noise can be a compelling state interest.** See Kovacs v. Cooper, 336 U.S. 77, 78 (1949) (upholding constitutionality of a municipal sound ordinance; noting that protecting public from

distracting, loud and raucous sounds and interference with privacy was a justified government purpose), also see Florida Constitution Art 2, § 7. Natural resources and scenic beauty.("...Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise..."). Traffic Safety and aesthetics are substantial government interests, but not compelling interests, especially where the regulation involves an individual's freedom of expression.

10. **The Court must uphold legislation where it is possible to remove the portions that are unconstitutional.** The "severance test" ultimately determines whether the overall intent is still accomplished without the invalid provisions. To sever all of the following must be answered in the positive:

- a. Can the unconstitutional provisions be logically separated from the valid ones?
- b. Can the legislative purpose in the valid provisions be accomplished without the void provisions?
- c. Would the Legislature have passed the good features without the bad features?
- d. Is there a complete act without the invalid provisions are stricken?
- e. Can the striking of provisions be done without expanding modifying or limiting the scope of the original statute's intent?

TOP TEN PRACTICAL TIPS IN DRAFTING A NOISE ORDINANCE

1. Declare the purpose and back it with data.
2. One size does not fit all. Understand and incorporate the technical aspects of sound.
3. Make sure the ordinance is not overly broad. It must be “narrowly tailored to serve the government’s interest.”
4. Clearly articulate terms, definitions, methods of measurements, and exceptions to ensure regulations are content neutral.
5. Beware blanket prohibitions for noises. Instead specify standards that are tailored for the place and time. Noises that are per se violations or activities that are restricted should be allowed in certain areas or during certain hours to ensure there are ample alternatives. City of Miami Beach v. Seacoast Towers-Miami Beach, 156 So. 2d 528 (3d DCA 1963) (striking ordinance prohibiting construction near hotels during months of December 1 –March 31, but giving City manager tight to waive requirement; noting the ordinance was not an “anti-noise” ordinance, but a “anti-building ordinance”).
6. Determine what is right for your community: Quantitative or Qualitative? The standards are not mutually exclusive, you can use both. Establish objective criteria in the form of decibel levels or if regulating noise based on subjective standards, use a reasonable standard person.
7. Do not use terms like “annoying,” “unusual” or “offensive.”
8. Consider permits for special events and exceptions, but provide guidelines to prevent prior restraint and due process challenges. City of Tampa v. Islands Four, Inc., 364 So. 2d 738 (Fla. 2nd DCA 1978).
9. Clearly define penalties and enforcement; set process for calibration, training of officers and process of review.
10. Budget a large amount of time for drafting, public input and passing of ordinance. See City of Sarasota v. Lemon, 722 So. 2d 268 (Fla. 2nd DCA 1998) (upholding municipal noise ordinance and permitting regulations and holding noise ordinances regulate conduct and therefore are not considered “land development regulations” as defined by Chapter 163, Florida Statutes, and not subject to the review requirements of Chapter 163).

SOURCES FOR DRAFTING OR REVISING NOISE ORDINANCES:

Florida Constitution Art 2, § 7. Natural resources and scenic beauty
42 U.S.C. § 4901. Congressional findings and statement of policy (Noise Control Act)

Florida Statutes:

Section 335.17. State highway construction; means of noise abatement
Section 316.293. Motor vehicle noise
Section 403.415. Motor vehicle noise
Section 823.16. Sport shooting ranges; definitions; exemption from liability; exemption from specified rules; exemption from nuisance actions; continued operation

Other Sources

IMLA Model Noise Ordinance available at:

http://www.imla.org/index.php?option=com_content&task=view&id=31&Itemid=61,

also available at Attachment 2 and 3, at:

http://www.leoncountyfl.gov/admin/agenda/new_view.asp?item_no=%2715%27&meeting_date=3/11/2008.

Local Noise Enforcement Options and Model Noise Ordinance With Pre-Approved Language for the State of New Jersey, available at:

http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&ved=0CFcQFjAF&url=http%3A%2F%2Fwww.popcenter.org%2Fproblems%2Floud_car_stereos%2FPDFs%2Fe215.pdf&ei=usjZUdyQAYa89QT9s4CQDw&usq=AFQjCNFiKcWBOZL_VaOylroSl6iQ81-shA&sig2=Fr7LK1wWIRmQgywX0Hy_JQ&bvm=bv.48705608,d.eWU

Model Noise Control Ordinance (1974), available at:

<http://nepis.epa.gov/Exe/ZyNET.exe>

Noise Ordinances, Tools for Enactment, Modification and Enforcement of a Community Noise Ordinance, by Robert C. Chanaud, Ph.D., available at:

<http://www.noisefree.org/resourceroom.php>

Websites:

Noisefree America - <http://www.noisefree.org/cityord.php>

Kinetics Noise Control - http://www.kineticsnoise.com/industrial/noise_ordinance.html

Noise Pollution Clearinghouse - <http://www.nonoise.org/lawlib/cities/cities.htm>



SOUND MEASUREMENT REPORT FORM

NAME/ADDRESS OF NOISE SOURCE:

DATE _____ DAY OF WEEK _____ TIME _____ am /pm.

Investigating
Agency _____
Investigating Officer _____
Name of responsible party notified _____

Description of noise source to be measured: _____

Description of property receiving noise _____

Description of Residual Noises, (fairly constant in nature) _____

Description of Extraneous Noises, (intermittent in nature, and not from source) _____

DESCRIPTION OF INSTRUMENT:

SOUND LEVEL METER _____ MODEL # _____ ANSI TYPE _____
SERIAL # _____ DATE OF LAST CERTIFICATION _____
SOUND LEVEL CALIBRATOR _____ WIND SCREEN USED (YES/NO) _____
WIND METER USED (YES/ NO) _____ TIME OF CALIBRATION _____

WEATHER CONDITIONS:

PRECIPITATION _____ GROUND WET _____ TEMPERATURE: _____
WIND VELOCITY _____ TIME TAKEN _____

NEIGHBORHOOD RESIDUAL NOISE MEASUREMENT:

TIME : START / FINISH READING RANGE (dba) TYPE RESIDUAL LOCATION OF MEASUREMENT/
COMMENTS

MEASUREMENT OF TOTAL NOISE:

TIME : START / FINISH READING RANGE (dbA) CORRECTED (SOURCE) LEVEL LOCATION / COMMENTS

Noise Measurement Taken By:

Reviewed By:

INCLUDE SITE SKETCH ON REVERSE (Include source, walk around, and exact measurement location)

**NOISE/SOUND ORDINANCES
COMPARISON OF FLORIDA & OTHER JURISDICTIONS**

The following Florida cities and their respective Noise Ordinances contain objective standards set in maximum decibel measurements for residential land use zones and also have special entertainment zones.

Tallahassee, FL (Proposed)

Residential/Non-Residential		Commercial	
Daytime (8am-10pm)	Nighttime (10pm-8am)	Daytime (8am-10pm)	Nighttime (10 pm- 8am)
Res. 65	Res. 60	75	65

Special Entertainment Zones	
Week Daytime (8am-11pm)	Week Nighttime (11pm-7am)
Weekend Day (8:00 am – 12 am)	Weekend Night (12 am – 8:00 am)
85	65

Gainesville, FL

Residential		Commercial	
Daytime	Nighttime	Daytime	Nighttime
61	55	66	60

Orlando, FL

Type of Property Generating Noise	Class A Standard 7 AM—10 PM	Class A Standard 10 PM—7 AM	Class B Standard (Entertainment)
Residential	60 dBA/65 dBC	55 dBA/60 dBC	65 dBA/70 dBC
Multi-Use	65 dBA/70dBC	55 dBA/60 dBC	65 dBA/70 dBC
Commercial	70 dBA/75 dBC	65 dBA/70 dBC	75 dBA/80 dBC
Industrial	75 dBA/80 dBC	75 dBA/70 dBC	85 dBA/90 dBC

Daytona, FL

Residential		Commercial		Industrial
7:00 a.m.—10:00 p.m.	10:00 p.m.—7:00 a.m.	7:00 a.m.—10:00 p.m.	10:00 p.m.—7:00 a.m.	All Times

60	55	65	60	75
----	----	----	----	----

Ft. Lauderdale, FL

USE	TIMES	OUTDOOR	INDOOR
Residential	7:00 a.m. to 10:00 p.m.	60 dBA*	45 dBA
	10:00 p.m. to 7:00 a.m.	50 dBA	35 dBA
Commercial	24 hours	65 dBA	55 dBA
Industrial	24 hours	75 dBA	65 dBA

Fort Myers, FL

Standard Sound Levels	
Residential, public space, agricultural, or institutional—7:00 a.m. to 7:00 p.m.	75 dBA
Residential, public space, agricultural, or institutional—7:00 p.m. to 11:00 p.m.	65 dBA
Residential, public space, agricultural, or institutional—11:00 p.m. to 7:00 a.m.	60 dBA
Commercial and industrial—7:00 a.m. to 7:00 p.m.	75 dBA
Commercial and industrial—7:00 p.m. to 7:00 a.m.	70 dBA
Entertainment—2:00 p.m. to 2:00 a.m.	75 dBA
Entertainment—2:00 a.m. to 2:00 p.m.	70 dBA

Miami, FL

Receiving Land Use	At Property Line or Beyond Between 10:00 p.m. and 7:00 a.m.	At Property Line or Beyond Between 7:00 a.m. and 10:00 p.m
Single-family	5 dBA above ambient or maximum of 55 dBA	10 dBA above ambient or maximum of 60 dBA
Multifamily, institutional, parks and noise-sensitive zones	5 dBA above ambient or maximum of 60 dBA	10 dBA above ambient or maximum of 65 dBA
Retail commercial (offices, retail, restaurants and movies)	5 dBA above ambient or maximum of 65 dBA	10 dBA above ambient or maximum of 65 dBA
Wholesale commercial and industrial	5 dBA above ambient or maximum of 70 dBA	10 dBA above ambient or maximum of 75 dBA

Panama City, FL

Land Use Category	Time	Sound Level Limit (dB(A))
Residential, public space or institutional	7:00 a.m.—10:00 p.m.	70
	10:00 p.m.—7:00 a.m.	65
Commercial or business	7:00 a.m.—10:00 p.m.	75
	10:00 p.m.—7:00 a.m.	70
Industrial, manufacturing or agricultural	At all times	75

Port St. Lucie, FL

Land Use Category	Sound Level Limits (in dBA)						Peak Sound Levels (in dBA)
	Time						
	7:00 a.m.—11:00 p.m.			11:00 p.m.—7:00 a.m.			
	L ₁ *	L ₁₀ *	L ₅₀ *	L ₁ *	L ₁₀ *	L ₅₀ *	
Residential	70	65	60	65	60	55	80
Commercial	75	70	65	70	65	60	85
Industrial	75	70	65	75	70	65	85

Tampa, FL

Noise Limitations. The maximum dBA and dBC sound levels permitted on any property within the City of Tampa, shall be as follows:

(1) In the Central Business District, the Ybor City Historic District and the Channel District as each is delineated in Chapter 27, City of Tampa Code, the average measurement taken between ten (10) and twenty (20) seconds shall be no greater than the maximum levels set out below.

- a. Eighty-five (85) dBA or eight-seven (87) dBC between the hours of 6:00 p.m. and 3:00 a.m.
- b. Sixty-five (65) dBA or seventy-five (75) dBC between the hours of 3:00 a.m. and 6:00 p.m.

(2) In all areas of the City of Tampa other than those areas listed in subsection (b)(1) above, the average measurement taken between (10) and twenty (20) seconds shall be no greater than the maximum levels set out below.

- a. Sixty (60) dBA or sixty-five (65) dBC between the hours of 7:00 a.m. and 10:00 p.m.
- b. Fifty-five (55) dBA or sixty-five (65) dBC between the hours of 10:00 p.m. and 7:00 a.m.

Pinellas County, FL

Sec. 58-451. - Maximum allowable noises created within residential zones.

- a. Except for those noises otherwise specifically provided for within this article, and in addition to the prohibitions set forth in section 58-444 it shall be unlawful to create or to permit to be created any noise within a residential zone that exceeds 72 dBA during the hours between 7:00 a.m. to 11:00 p.m., or 55 dBA during the hours between 11:00 p.m. and 7:00 a.m., daily, measured at the nearest adjacent property line.
- b. It shall be unlawful to operate or permit to be operated any air conditioning, heating or ventilating unit at any time that produces a noise exceeding 60 dBA, measured at the nearest adjacent property line.
- c. In the case of multifamily dwelling units, it shall be unlawful to create or permit to be created any noise that exceeds 55 dBA during the hours between 7:00 a.m. to 11:00 p.m., or 40 dBA during the hours between 11:00 p.m. and 7:00 a.m., daily, measured from a neighbor's dwelling.

- (1) Exceeds an equivalent A-weighted sound level (Leq) of 60 db(a) across a residential real property boundary or within a noise-sensitive zone, between the hours of 7:00 a.m. and 10:00 p.m.;
- (2) Exceeds an equivalent A-weighted sound level (Leq) of 55 db(a) across a residential real property boundary or within a noise-sensitive zone, between the hours of 10:00 p.m. and 7:00 a.m.; or
- (3) Exceeds an equivalent A-weighted sound level (Leq) of 80 db(a) across a real property boundary within a commercial/light industrial district; or
- (4) Disturbs the peace, quiet and comfort of the neighboring residential inhabitants, or at any time with louder volume than is necessary for convenient hearing for the persons who are in the room, vehicle or chamber in which the noise is generated and who are voluntary listeners, or is plainly audible across a residential property line 50 feet or more from the source of the noise; or

Charlotte, NC

Sec. 15-69. Amplified sound.

(a) It shall be unlawful to:

- (1) Operate or allow the operation of any sound amplification equipment so as to create sounds registering fifty-five (55) db(A) between 9:00 a.m. and 9:00 p.m. or fifty (50) db(A) between 9:00 p.m. and 9:00 a.m., as measured anywhere within the boundary line of the nearest residentially occupied property, except in accordance with a permit obtained from the noise control officer.
- (2) As to multifamily structures including apartments condominiums, or other residential arrangements where boundary lines can not readily be determined, it shall be unlawful to operate or allow the operation of any sound amplification equipment so as to create sounds registering fifty-five (55) db(A) between 9:00 a.m. and 9:00 p.m. or fifty (50) db(A) between 9:00 p.m. and 9:00 a.m., as measured from any point within the interior of another residential unit in the same complex or within the boundary line of the nearest residentially occupied property, except in accordance with a permit obtained from the noise control officer.
- (3) As to places of public entertainment having a capacity of one thousand (1,000) or more persons, operate or allow the operation of any sound amplification equipment so as to create sounds registering more than sixty-five (65) db(A) between 9:00 a.m. and 9:00 p.m., or fifty (50) db(A) between 9:00 p.m. and 9:00 a.m., as measured anywhere within the boundary line of the nearest residentially occupied property, except in accordance with a permit obtained from the noise control officer.
- (4) Operate or allow the operation of any sound amplification equipment for advertising purposes or otherwise to attract customers so as to cast sounds which are unreasonably loud and disturbing or which register more than sixty (60) db(A) at or on the boundary of the nearest public right-of-way or park.
- (5) Operate or allow the operation for personal use of any sound amplification equipment on the public right-of-way, including streets or sidewalks, or in the public parks so as to produce sounds registering more than sixty (60) db(A) fifty (50) feet or more from any electromechanical speaker between the hours of 9:00 a.m. and 9:00 p.m., or fifty (50) db(A) fifty (50) feet or more from any electromechanical speaker between the hours of 9:00 p.m. and 9:00 a.m.

NON-FLORIDA CITY ORDINANCES (Excerpts)

Austin, TX (Ordinance Extract)

(RESIDENTIAL/PERMANENT BUSINESS LOCATION): The use or operation of an amplification device at a permanent business location or private residence to produce a sound in excess of 85 dB between 10:00 a.m. and 10:00 p.m., and 80 dB between 10:00 p.m. and 2:00 a.m. as measured at the boundary line of the permanent business location or private residence shall be deemed reasonably calculated to disturb the peace and unreasonably offensive to the public.

(PARKS) If the sound amplification device is to be used or operated within a park, any permit shall be conditioned upon the use or operation of such device between the hours of 10:00 a.m. and 10:00 p.m., except as provided hereinafter:

(1) If approval for use of the park beyond the established curfew has been obtained from the Director, and the sound amplification device is to be used or operated on a permanently constructed bandstand, or within or about a building utilized for dances, performances, parties or similar activities, any permit shall be conditioned upon the use or operation of such device between the hours of 10:00 a.m. and 2:00 a.m.

(2) If approval for use of the park beyond the established curfew has been obtained from the Director, and the amplified sound device is more than 600 feet from any property having a residential zoning designation, any permit shall be conditioned upon the use or operation of the sound amplification device between the hours of 10:00 a.m. and 2:00 a.m.

(3) (a) In addition to the preceding time restrictions, no amplification device shall be used or operated within a park to produce a sound in excess of 85 dB between 10:00 a.m. and 10:00 p.m.; and 80 dB between 10:00 p.m. and 2:00 a.m., as measured 100 feet in front of the device or at the boundary of such park in front of the device, whichever distance is lesser.

(b) No amplification device shall be used or operated at Auditorium Shores to produce sound in excess of 80 dB at any time a measurable wind is blowing from any northerly direction. Sound measurements shall be taken in front of the sound

San Antonio, TX

(9) The making of noise which exceeds sixty-three (63) decibels on residential zoned property as defined by City Code Chapter 35 (Unified Development Code), when measured from property under separate ownership.

(10) The making of noise which exceeds seventy (70) decibels on business zoned property as defined by City Code Chapter 35 (Unified Development Code), when measured from property under separate ownership.

(11) The making of noise which exceeds seventy-two (72) decibels on industrial zoned property as defined by City Code Chapter 35 (Unified Development Code), when measured from property under separate ownership.

(12) The making of noise which exceeds 85 decibels using the Leq method of noise measure for noise emanating from entertainment zoned property as defined by City Code Chapter 35 (Unified Development Code), when measured from property under separate ownership.

Kansas City, MI

Noise disturbance means any sound level which, except as authorized by permit: