

# *City of Dade City*

## **AGENDA MEMO**

**To:** Mayor and Members of the City Commission  
**From:** Karla S. Owens, City Attorney  
**Subject:** Proposed Amendment to Noise Ordinance  
**Date:** February 24, 2009

It is requested that the City Commission consider the following information and recommendation(s):

### **BACKGROUND:**

Sections 42-31 through 42-33 of the Dade City Code and Section 5.26 (b) and (c) of Zoning Ordinance No. 360 currently regulate noise. Such regulations, however, were written in 1954 and 1973, respectively. Obviously, due to ever-changing technology, the varieties and types of noise generated today are greatly different from either era. In addition, while the boundaries of the City itself are growing with residential areas expanding into former agricultural, commercial or industrial areas, so also is the built-out unincorporated area of the County which encroaches into our community more every day. Finally, many of the new residential projects recently approved by the City Commission have a portion of the development containing multi-family housing. The increase in our population and the more compacted our housing developments, the greater the risk of noise proliferation causing an adverse effect on the public health and safety.

### **ISSUES:**

The current regulations were drafted in 1954 and 1973, and not only conflict with each other, but contain no specific guidelines for the restriction of noise, decibel or octave sound levels. Such conflicting, vague and non-quantified standards lead to disproportionate enforcement and will be hard to justify in a court of law. The attached draft ordinance is based upon Pinellas County's noise ordinance with portions of ordinances from the Cities of Deland, Zephyrhills and Citrus County. This new draft is also based on comments and suggestions provided by the USF professor who teaches courses on sound meters and enforcement to various entities state-wide and with a law review article published by Stetson University College of Law detailing legal and constitutional requirements for municipal noise ordinances in the State of Florida.

Some changes have been made to the attached draft including deletion of the section appearing to “grandfather” existing uses and language allowing prosecution of alleged violations emanating from the unincorporated area of the County.

**ALTERNATIVES:**

1. Adopt the attached ordinance and authorize the mayor’s signature of same; or
2. Direct staff to make specific revisions to the proposed Ordinance; or
3. Do not adopt the attached ordinance.

**RECOMMENDATION:**

This office recommends the Commission approve Alternative 1 above.

**FUNDING:**

City staff already possesses a qualified noise meter for enforcement purposes. Funding for certification classes for two police officers and one code enforcement officer will be required for this item. The cost of the certification class is unknown at this time.

## Drafting a Noise Ordinance in Florida—General Information

February 3, 2009

- I. In Winter 2006, Stetson Law Review published article detailing requirements for noise regulations in Florida and outlining the criteria for drafting a noise ordinance which will pass constitutional muster.
- II. Although the article gives a general overview of noise regulations nationwide, the purpose of the article is to provide guidelines for a constitutional noise ordinance as interpreted under current Florida law.
- III. Per Florida law, the safest approach to noise control is through objective decibel-based ordinances that are narrowly tailored to address noise at particular volumes, times, and geographic areas.
- IV. Seven Recommendations for Drafting a Constitutional Noise Ordinance in Florida:
  - A. The ordinance should include a declaration of purpose or policy that sets forth the government’s interest in regulation of community noise. (**See Proposed Ordinance Section 42-32.**)
  - B. The ordinance should include a definition section clearly specifying the measurement devices and methods to be used in determining decibel limit violations. (**See Proposed Ordinance Section 42-31 Definitions. Explicit definitions provided for “decibel”, “A-weighted level”, “octave band”, “sound level meter” and “sound pressure level”. In addition, Sections 42-39 and 42-42 set forth precise methods for sound measurement.**)
  - C. The ordinance should include a clear and objective standard for determining noise violations. (**The prior reference to “disturbing the peace” and “loud, disturbing and unnecessary” noise has been eliminated and replaced with specific decibel and octave limitations as set forth in Sections 42-40 and 42-43.**)
  - D. The ordinance should include one or more separate provisions regulating noise based on the character or nature of the sound since not all sound sources lend themselves to the use of sound measurement equipment. (**A more subjective standard has been included in the Proposed Ordinance in Section 42-33 and Section 42-34.**)

- E. The ordinance should designate certain noises to be a per se violation or “prima facie evidence” of a violation. (**Sections 42-34, 42-37, 42-38, 42-39 and 42-40 of the Proposed Ordinance specifically forbid common and particularly bothersome activities during particular hour, in certain areas, and/or above specified decibel or octave levels.**)
  
- F. The ordinance should provide a process for granting permits for sound producing activities. (**Section 42-36 allows for issuance by the City Commission of a temporary waiver for relief from the maximum allowable noise level limits designated in the ordinance. In addition, noises associated with special events, holidays and ceremonies which exceed maximum noise levels also may be allowed if approved pursuant to a special event permit.**)
  
- G. The ordinance should include a clearly worded enforcement section that identifies such things as penalties, enforcement officers, time for compliance and a process for review. (**Section 42-42 of the Proposed Ordinance addresses who may be cited for violations and the process for issuance of a citation.**)

BY THE CITY COMMISSION

ORDINANCE NO.: 2009-03

AN ORDINANCE BY THE CITY COMMISSION OF THE CITY OF DADE CITY, FLORIDA, AMENDING SECTIONS 42-31 THROUGH 42-33 OF THE DADE CITY CODE OF ORDINANCES TO SUBSTANTIALLY REWRITE REGULATIONS PERTAINING TO NOISE; PROVIDING DEFINITIONS AND FINDINGS; PROVIDING FOR GENERAL PROHIBITIONS, EXCEPTIONS, NON-CONFORMING USES, AND WAIVERS; PROVIDING FOR THE PROHIBITION OF SPECIFIC ACTS AND NOISES; PROVIDING FOR MAXIMUM NOISE LEVELS IN INDUSTRIAL, COMMERCIAL AND RESIDENTIAL ZONES; PROVIDING FOR NOISE WITHIN PUBLIC PARKS; PROVIDING FOR OCTAVE BAND SOUND LEVEL LIMITS; AMENDING SECTION 5.26 OF THE DADE CITY ZONING ORDINANCE, PERFORMANCE STANDARDS, TO DELETE SUBSECTIONS B AND C; PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City of Dade City adopted the current noise ordinance in 1956, which ordinance has since been codified as Sections 42-31 through 42-33 of the Dade City Code of Ordinances; and

WHEREAS, in September 1973, the City adopted Zoning Ordinance No. 360 which contains Section 5.26 (b) and (c) which set forth performance standards for noise within commercial zoning districts; and

WHEREAS, these current noise regulations conflict and do not clearly provide specific decibel and octave band sound levels and guidelines from which various noises can be quantified and equitably managed and enforced; and

WHEREAS, the City Commission has studied the issue of noise pollution within the City limits and has adopted the findings set forth in this Ordinance; and

WHEREAS, it has become necessary to amend these existing noise regulations to provide specific guidelines for the control of noise proliferation.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Dade City, Florida as follows:

SECTION 1.: Sections 42-31 through 42-33 of the Dade City Code of Ordinances are hereby deleted and substantially rewritten as follows:

**Sec. 42-31. Definitions.**

The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them, except where the context clearly indicates a different meaning:

**Ambient noise** means the all-encompassing noise associated with a given environment, being usually a composite of sound from many sources near and far.

**A-weighted level (dBA)** means the total broadband sound level of the noise spectrum as measured using the A-weighted network of a sound level meter. The unit of measurement is the dBA. Sound level meter settings shall be for slow response, except for motor vehicle measurements which shall be fast response.

**City** means the City of Dade City, Florida.

**Commercial Zone** means any geographic area designated for commercial or professional activities by the zoning authority having jurisdiction over such area, and also includes any area that is designated as institutional on the City or County's future land use map.

**Continuous noise** means a noise which remains essentially constant in level during the period of observation.

**County** means Pasco County, Florida.

**Decibel (dB)** means a division of a logarithmic scale used to express the ratio of two like quantities proportional to power or energy. The ratio is expressed in decibels by multiplying its common logarithm by 10.

**Emergency** means a situation wherein immediate work is necessary to restore property to a safe condition following a public calamity or immediate work is required to protect persons or property from an imminent exposure to danger.

**Gross Combination Weight Rating (GCWR)** means the value specified by the manufacturer as the loaded weight of a combination vehicle.

**Gross Vehicle Weight Rating (GVWR)** means the value specified by the manufacturer as the loaded weight of a single vehicle.

**Impulsive noise** means a noise which is characterized by brief excursions of sound pressure which significantly exceed the ambient noise level.

**Industrial Zone** means any geographic area designated for industrial or manufacturing activities by the zoning authority having jurisdiction over such area.

**Intermittent noise** means a noise whose sound pressure level exceeds the ambient noise level at either regular or irregular intervals.

**Motor-Driven Cycle** means every motorcycle and every motor scooter with a motor which produces not to exceed five brake-horsepower, including every bicycle with a motor attached.

**Motor Vehicle** means any vehicle which is self-propelled.

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

**Noise level** means the sound pressure level as measured in dBA unless otherwise specified. A measurement of noise must be at least five dB above the ambient noise level.

**Octave Band** means all of the components in a sound spectrum whose frequencies are between two sine-wave components separated by an octave.

**Residential Zone** means any geographic area designated for single-family or multi-family.

**Sound level meter** means an instrument to measure the sound pressure level of relatively continuous and broadband noises. The sound level meter used to determine

compliance with this Ordinance shall meet or exceed the requirements for a Type 2 sound level meter in accordance with ANSI standard S1.4.

**Sound pressure level** means the squared ratio, expressed in decibels, of the sound pressure under consideration to the standard reference pressure of 0.0002 dyne/cm squared. The ratio is squared because pressure squared, and not pressure, is proportional to energy.

**Vehicle** means any device, in, upon, or by which, any person or property is or may be transported or drawn upon a highway, except devices

### **Sec. 42-32. Findings.**

For the purposes of this Ordinance, it is found and declared that:

- (1) The making and creation of excessive, unnecessary or unusually loud noises within the limits of the City is a condition which has existed for some time and the amount of intensity of such noises is increasing.
- (2) The making, creation or maintenance of such excessive, unnecessary, unnatural or unusually loud noises which are prolonged, unusual and unnatural in their time, place and use affect and are a detriment to the public health, comfort, convenience, safety, welfare and prosperity of the residents of the City.
- (3) The necessity in the public interest for this Ordinance is declared as a matter of legislative determination and public policy, and it is further declared that this Ordinance is in pursuance of and for the purpose of securing and promoting the public health, comfort, safety and repose of the City and its inhabitants.
- (4) It is not the intent of this legislation to interfere unduly with freedom of speech or religion.

### **Sec. 42-33 General Prohibitions.**

- (1) No person shall make, continue, permit, or cause to be made or continued:
  - (a) Any unreasonably loud and raucous noise;
  - (b) Any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace or safety of reasonable persons of ordinary sensitivity; or
  - (c) Any noise which exceeds the maximum allowable limits set forth in this Ordinance.
- (2) Factors which shall be considered in determining whether a violation of subsection (1) above exists shall include, but not be limited to, the following:
  - (a) The volume of the noise;
  - (b) The intensity of the noise;
  - (c) The volume and intensity of the background noise, if any;
  - (d) The nature and zoning of the area from which the sound emanates and the area where it is received or perceived;

- (e) The duration of the noise;
- (f) The time of the day or night the noise occurs;
- (g) Whether the noise is recurrent, intermittent, or constant; and
- (h) Whether a noise complaint has been received by the City.

**Sec. 42-34. Specific Acts Constituting Unreasonably Loud and Raucous Noise.**

Any of the following acts and causes thereof are presumed to be in violation of this Ordinance and to constitute unreasonably loud and raucous noise. This enumeration does not constitute an exclusive list:

- (1) *Radios, televisions, boomboxes, stereos, musical instruments, drums or similar devices.* Operating, playing or permitting the operation or playing of any radio, television, boombox, stereo, musical instrument, drum or similar device which produces or reproduces sound in such a manner as to be unreasonably loud and raucous, or in such a manner as to unreasonably disturb, injure, or endanger the comfort, repose, health, peace or safety of reasonable persons of ordinary sensitivity.
- (2) *Radios, televisions, boomboxes, stereos, musical instruments, drums or similar devices in/on any vehicle or by pedestrian.* Operating, playing or permitting the operation or playing of any radio, television, boombox, stereo, musical instrument, drum or similar device, which is located in or on any vehicle or by any pedestrian on publicly owned land or a public parking lot, which produces or reproduces sound in such a manner as to be unreasonably loud and raucous, or in such a manner as to unreasonably disturb, injure, or endanger the comfort, repose, health, peace or safety of reasonable persons of ordinary sensitivity.
- (3) *Loading and unloading.* Loading and unloading, opening, closing or other handling of boxes, crates, containers, equipment, building materials, garbage cans or similar objects between the hours of 11:00 p.m. and 6:00 a.m. on any day within a residentially zoned area, provided that the noise is unreasonably loud and raucous, and can be heard across the property line of the property line from which it emanates.

**Sec. 42-35. Exceptions.**

Notwithstanding the noise prohibitions set out in this Ordinance, the following shall be permitted:

- (1) The operation of warning or emergency signal devices such as sirens, horns, and bells when utilized for their intended purposes.
- (2) Noises resulting from equipment or operations incidental to the emergency repair of facilities or restoration of services such as public utilities or other emergency activities in the public interest.
- (3) Ordinary noise created by the operation of railways and aircraft.
- (4) Noises, consistent with cultural, historical or traditional observances, holidays and ceremonies, provided that a permit for such event has been obtained from the City in accordance with the special event ordinance, if applicable.
- (5) Noises generating from educational programs at public or private schools during school hours.

**Sec. 42-36. Waivers.**

- (1) An application for a temporary waiver for relief from the maximum allowable noise level limits designated in this Ordinance may be made in writing to the City Commission through the City Manager's Office. The request for waiver shall be considered by the City Commission at a public hearing within thirty (30) days of submittal of a completed waiver application. Any waiver granted by the City Commission under this Section must be in writing and shall contain all conditions upon which the permit shall be effective. The City Commission may only grant the waiver as applied for under the following conditions:
  - (a) The City Commission may prescribe any reasonable conditions or requirements which may be deemed necessary to minimize adverse effects upon the community or the surrounding neighborhood, including but not limited to the use of mufflers, screens or other sound attenuating devices;
  - (b) Waivers may be issued for no longer than one hundred eighty (180) days, renewable by further application to the City Commission.
- (2) Any party directly aggrieved by the denial of the application for waiver by the City Commission may appeal such denial to the circuit court by writ of certiorari within thirty (30) calendar days from the date of denial.

**Sec. 42-37. Construction Noise.**

- (1) No person shall operate or permit to be operated any power-driven construction equipment without a muffler or other noise reduction device at least as effective as that recommended by the manufacturer or provided as original equipment.
- (2) No construction activities shall be permitted between the hours of 10:00 p.m. and 7:00 a.m. that produce noise exceeding 55 dBA, measured at the nearest property line of an adjacent residential area. Construction equipment that must be operated near a residentially zoned area on a 24-hour per day basis (e.g., pumps, well tips, generators, etc.) due to emergency situations shall be shielded by an acoustical enclosure during the hours of 10:00 p.m. to 7:00 a.m. unless the unshielded noise level is less than 55 dBA, measured at the closest adjacent residentially zoned property line.

**Sec. 42-38. Maximum Allowable Industrial or Commercial Noises.**

- (1) In addition to the general noise prohibitions set forth above, no noise shall be created or permitted to be created in an industrial or commercial zone which exceeds those levels given in the table below, as measured on the adjacent property line.

***Maximum Noise Levels Permitted in Industrial and Commercial Zones.***

Zone From Which Noise Emanates	Adjoining Commercial Zone (No Time Limit)	Adjoining Residential Zone (7:00 a.m. to 10:00 p.m.)
Industrial	72 dBA	66 dBA
Commercial	66 dBA	60 dBA

The maximum permitted noise level emanating from a commercially or industrially zoned district measured at the nearest adjacent residentially zoned property line for the hours between 10:00 p.m. and 7:00 a.m. shall be 55 dBA.

- (2) In cases of impulsive noises, the noise levels listed in Subsection (a) of this Section shall be increased by 10 dBA (as measured on a sound level meter) during the hours of 7:00 a.m. to 10:00 p.m., but shall not exceed the levels set forth in the table above during the period from 10:00 p.m. to 7:00 a.m.

#### **Sec. 42-39. Maximum Allowable Noises Created Within Residential Zones.**

- (1) Except for those noises otherwise specifically provided for within this Ordinance, and in addition to the general noise prohibitions set forth above, it shall be unlawful to create or to permit to be created, any noise within a residential zone that exceeds 60 dBA during the hours between 7:00 a.m. to 10:00 p.m. or 55 dBA during the hours between 10:00 p.m. and 7:00 a.m. measured at the nearest adjacent property line.
- (2) 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.
- (3) In the case of multi-family 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. and 10:00 p.m. or 40 dBA during the hours between 10:00 p.m. and 7:00 a.m. daily, measured from a neighbor's dwelling.

#### **Sec. 42-40. Noises Within Outdoor Public Recreation Areas and Parks.**

It shall be unlawful to operate or permit to be operated, any mechanical or electrical device (including but not limited to loudspeakers, radios, and boomboxes) within an outdoor public recreation area or park that produces a noise exceeding 72 dBA during the hours that the park is open. All noise is prohibited within a park or public recreation area when it is closed.

#### **Sec. 42-41. Octave Band Sound Level Limits.**

In addition to the standards listed in this Ordinance, for any source or sound which can be detected on any parcel of property adjacent to the source or sound, the maximum allowable sound level limit for the individual octave bands whose centers are 31.5, 63, 125, 250, and 500 Hertz, shall not exceed 65 dBA.

#### **Sec. 42-42. Unlawful Acts and Enforcement.**

- (1) It shall be unlawful, except as expressly permitted in this Ordinance, to make, cause or allow the making of any noise or sound within the boundaries of the City which exceed the limits set forth in this Ordinance.
- (2) It is the intention of the City Commission that each separate provision of this Ordinance shall be deemed independent of all other provisions herein.
- (3) The owner, tenant or lessee of property, or a manager, overseer or agent, or any other person or persons lawfully entitled to possess the property from which the offending noise is emitted and at which time the offending noise is emitted shall be responsible for compliance with this Ordinance, and each may be punished for violations of this Ordinance. It shall not be a lawful defense to assert that some other person caused such noise, but the lawful possessor of the premises shall be responsible for operating or maintaining such premises in compliance with this Ordinance and shall be punished whether or not the person actually causing such noise is also punished.

- (4) The following procedures shall be followed by the enforcement agent when enforcing this Ordinance:
- (a) The enforcement agent shall investigate and determine if any noise is in violation of the specific noise prohibitions or in excess of the noise control measurement standards set forth in this Ordinance.
  - (b) Measurement techniques, when required, shall be done in accordance with this Ordinance.
  - (c) If a noise level is found to be in violation of this Ordinance, the enforcement agent shall give a written warning to the person responsible for the sound. The warning shall advise the person of the violation and of the possible penalty if the person fails to eliminate the sound or reduce the sound so that it is within permitted limits or is not plainly audible.
  - (d) The person receiving the warning shall have a reasonable time to comply with the warning. Absent special circumstances, reasonable time is 15 minutes.
  - (e) For the purposes of this ordinance, it is sufficient warning for all prohibited sounds if the person responsible for such sound has been warned of, or cited for, one or more offending sounds of the same type within the previous 60 days, or in the case of a business, in the time period since ownership of the business changed, whichever is less.
  - (f) If the sound is not eliminated or is not reduced to allowable limits within a reasonable time after the warning, or if the noise or sound is abated after warning and then reoccurs, the person so warned and not complying, shall be cited for a violation of this Ordinance.
  - (g) The operation or maintenance of any device, instrument, vehicle or machinery in violation of any provisions herein which endangers the comfort, repose, health and peace of residents in the area is declared to be a public nuisance and may also be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

#### **Sec. 42-43. Areas Embraced.**

All territory within the legal boundaries of the City, including all future incorporated areas, shall be embraced by this Ordinance, unless in conflict with or specifically deleted by another municipal ordinance.

SECTION 2. Repealer. All ordinances or code provisions in conflict with this Ordinance, including but not limited to former Sections 42-31 through 42-33 of the Dade City Code of Ordinances and Section 5.26 (b) and (c) of Zoning Ordinance No. 360, are hereby repealed.

SECTION 3. Codification. It is the intent of the City Commission that this Ordinance be subsequently codified as Sections 42-31 through 42-43 of the Dade City Code of Ordinances.

SECTION 4. Severability. It is declared to be the intent of the City Commission of the City of Dade City, Florida that if any section, subsection, sentence, clause, or provision of this Ordinance shall be declared invalid, the remainder of the Ordinance shall be construed as not having contained said section, subsection, sentence, clause, or provision, and shall not be affected by such holding.

SECTION 5. Effective Date. This Ordinance shall become effective as provided in the City Charter.

The foregoing Ordinance No. 2009-03 was read and passed on the first reading on the 10th day of February, 2009, and read and approved following public hearing on the 10th day of March, 2009.

ATTEST:

CITY OF DADE CITY, FLORIDA

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James D. Class, City Clerk

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Scott Black, Mayor

Approved as to Legal Form and Sufficiency

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Karla S. Owens, City Attorney