

ARTICLE IV. - NOISE<sup>[6]</sup>

Footnotes:

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**Editor's note**—Ord. No. 04-173, § 1, adopted April 21, 2004, repealed art. IV, §§ 42-211—42-2113 in their entirety. Section 3 of said ordinance provided for a new art. IV to read as herein set out. Formerly, said article pertained to similar subject matter. See the Code Comparative Table for a detailed analysis of inclusion.

**Cross reference**— Loud noises and speaking devices, selling or offering to sell from vehicles on public streets or rights-of-way, § 66-32.

## DIVISION 1. - GENERAL

## Sec. 42-211. - Purpose.

- (a) It is the policy of the City of Daytona Beach to minimize the exposure of citizens to the physiological and psychological dangers associated with excessive and unreasonable noise. The control of excessive and unreasonable noise is essential to protect, promote and preserve public health, safety and welfare of the community.
- (b) The operation or maintenance of any device, instrument, equipment or machinery in violation of this article is declared to be a public nuisance.
- (c) It is the express intent of the city to control the level of noise in a manner that balances the reasonable use of nonresidential property with the use and enjoyment of residential property. It is not the intent of the city to control or regulate noise based on the content or type of speech involved, or the speaker's viewpoint.

(Ord. No. 04-173, § 3, 4-21-2004)

## Sec. 42-212. - Definitions.

The following words and terms, when used in this article, shall have the following meanings:

*Above background* means a sound pressure level measurement that is higher than the background noise.

*A-weighting* is the electronic filtering in sound level meters that models human hearing frequency sensitivity.

*Ambient noise* is the total sound pressure level in the area of interest including the subject sound source being measured.

*Amplified* is an increase in the strength, amount of or loudness of a device.

*Amplified sound* is 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.

*Background noise* is the total sound pressure level in the area of interest excluding the subject sound source being measured.

*dB(A)* is the sound level measured in decibels, using the a-weighting filter.

*Decibel* is a unit for measuring the intensity of a sound, the mathematical formula for which is expressed as the ratio between two quantities that are proportional to power. Decibels are the commonly used unit for measuring sound pressure levels and are abbreviated "dB."

*Impulsive sound* is a sound of short duration with an abrupt onset and rapid decay.

*Noise* is the intensity, duration and character of sound from any and all sources.

*Officer* is any police officer or other employee of the City of Daytona Beach that has been assigned responsibility to enforce this article by the city manager.

*Outdoor seating area* is a seating area with or without a solid roof cover that is enclosed on three sides or less by walls.

*Person* is any individual, firm, association, society, co-partnership, joint venture, corporation, or any entity public or private.

*Property line* is either (a) the imaginary line, including its vertical extension that separates one parcel of real property from another, or (b) the vertical and horizontal boundaries of a unit within a multi-tenant facility.

*Pure tone* is any sound that is comprised of single pitch or set of pitches.

*Residential area* is an area of land, including, without limitations, a residential subdivision, or an apartment, condominium or townhouse complex, that is predominantly developed with buildings consisting of dwelling units which are occupied as residences.

*Sound level* is the instantaneous sound pressure level measured by the use of a meter.

*Sound level meter* is a device that is used to measure sound pressure waves.

*Unreasonable noise* is any raucous, jarring, or other sound of such intensity, duration or character which constitutes a nuisance, or which disturbs the enjoyment of life or property by persons of reasonable sensitivity within the area of audibility.

(Ord. No. 04-173, § 3, 4-21-2004)

Sec. 42-213. - Exemptions.

Noise from the following sources or causes shall be exempt from the provisions of this article:

- (1) Air conditioners, when functioning in accord with the manufacturer's specifications, manufacturer's standard mufflers and noise reducing equipment, and in proper operating condition according to standards promulgated by the American Refrigeration Institute.
- (2) Construction operations providing all equipment is operated in accord with the manufacturer's specifications and with all standard equipment, manufacturer's mufflers or noise reducing equipment, and in proper operating condition. In residential areas this exemption shall not apply during the hours from 10:00 p.m. to 7:00 a.m.
- (3) Noise created by safety and protection devices such as burglar alarms, fire alarms and emergency pressure relief valves.
- (4) Authorized sirens, horns, or loudspeakers used by government agencies for emergency or public safety purposes.
- (5) Noise originating from aircraft in flight, and sounds that originate at airports and are directly related to flight operations. This exemption does not apply to model aircraft.
- (6) Noise caused by organized sporting events, religious, educational, civic associations or other group activities, when such activities are conducted on improved property that is designed for and generally used for such purposes, including bandshells, amphitheaters, stadiums, parks, schools, churches, athletic fields, racetracks and accessories thereto; provided, however, that such uses of property are otherwise permitted by applicable city ordinance.

(Ord. No. 04-173, § 3, 4-21-2004)

Sec. 42-214. - Prohibitions.

- (a) No person shall produce, cause to be produced, or allow to be produced, by any means, any of the following sound within any property, and all such sounds are declared to be unreasonable:
  - (1) No person shall scream, shout, yell, call, hoot, whistle on public streets, public places or in any building adjacent thereto between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to disturb any person of reasonable sensitivity within the area of audibility.
  - (2) No person shall operate or use or cause to be operated any television, radio, musical instrument, stereo system, sound amplifier or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quite, and comfort of inhabitants of a residential area that are of reasonable sensitivity within the area of audibility.
  - (3) No person shall operate or permit to be operated outdoors in a residential area, any power tool or equipment, including but not limited to saws, sanders, drills, grinders, lawn or garden tools, mowers, tractors, chain saws, leaf blowers or gatherers or similar devices or wood chippers of any kind, during the hours of 10:00 p.m. to 7:00 a.m.
- (b) No person shall produce, cause to be produced, or allow to be produced, by any means, any unreasonable noise from within any property.
- (c) No person shall produce, cause to be produced, or allow to be produced, by any means, any sound from within any property, that when measured from a location described in section 42-216, exceeds the noise level standards set forth in section 42-215.
- (d) The owner of property, a tenant, a lessee, a manager, an overseer, an agent, a corporation, or any other person entitled to lawfully possess or who claims lawful possession of such property at the particular time involved, shall each be responsible for compliance with this article, and each may be punished for violation of this article. It shall not be a lawful defense to assert that some other person caused such sound, but each lawful possessor or claimant of the premises shall be responsible for operating or maintaining such premises in compliance with this article and may be punished whether or not the person actually causing such sound is also punished.
- (e) Every railroad train of a railroad company operating wholly within the state is unconditionally prohibited from emitting an audible warning signal and/or sounding a railroad train horn or whistle between the hours of 10:00 p.m. and 6:00 a.m. the next day in advance of any public at-grade crossing having train-activated automatic traffic control devices which include flashing lights, bells, and crossing gates and where the city signs are erected at such public at-grade crossings having traffic control devices announcing that railroad train horns and whistles will not be sounded during such hours.

(Ord. No. 04-173, § 3, 4-21-2004)

Sec. 42-215. - Noise level standards.

- (a) Except as provided in subsections (b) or (c) of this section, the noise level standards are as follows:
  - 10 dBA above background noise during the hours 7:00 a.m. to 10:00 p.m.
  - 5 dBA above background noise during the hours 10:00 p.m. to 7:00 a.m.
- (b) If the background noise cannot be measured in accordance with the standards in subsection (a) of this section, the noise level standard shall be as set forth in the following table. For purposes of applying this table, the terms, "residential," "commercial," and "industrial" refer to the type of use of the property which is the source of the noise to be measured.

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
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- (c) The noise level standards set forth in subsections (a) and (b) shall be reduced or increased as follows:
- (1) If the noise source in question is a pure tone, the absolute noise level limit shall be reduced by five dBA.
  - (2) If the noise source in question is impulsive, the absolute noise level shall be reduced by five dBA.
  - (3) The city commission by resolution may establish alternate noise level standards to those contained herein during declared special events.

(Ord. No. 04-173, § 3, 4-21-2004)

Sec. 42-216. - Measurement of noise level standards.

- (a) Insofar as practicable noise shall be measured for compliance with the noise level standards set forth in this division, while the source is operating at normal, routine conditions. In addition, all measurements for compliance with the noise level standards shall be in accordance with the requirements of this section.
- (b) The sound level meter used for measurement shall be of a standard design and quality of manufacture as established by the American National Standard Institute. The sound level meter shall be calibrated in accordance with the methodology recommended by the manufacturer immediately before each series of noise measurements.
- (c) Measurement shall be made at least 100 feet from any property line of the premises from which the noise is generated.
- (d) Prior to taking noise measurements the officer shall explore the vicinity of the noise source to establish the approximate location and character of the source in question, to identify any other sound sources that could affect measurements, and to select a suitable location or locations from which to measure the noise.
- (e) Measurement shall be taken at a height at least three feet above grade and at least ten feet away from any wall, barriers or obstructions. The meter shall be pointed at the source and held at arm's length on an angle recommended by the manufacturer of the meter. In addition:
  - (1) Measurement taken from a continuous sound, or sound that is sustained for more than one second at a time shall be measured with the meter set for A-weighting and slow response speed.
  - (2) Measurement shall be made for a sufficient period of time to ensure that the noise levels being measured are typical of the source in question.
  - (3) The enforcement officer shall measure and record the ambient sound level with the noise source in question and if practicable the background sound level without the source in question. The minimum and maximum readings shall be recorded to indicate the range of monitored values.

(Ord. No. 04-173, § 3, 4-21-2004)

Secs. 42-217—42-240. - Reserved.

DIVISION 2. - SOUND AMPLIFICATION PERMITS

Sec. 42-241. - Findings.

- (a) The city commission finds as follows:
  - (1) Sound amplification devices, by their nature, are intended to increase sound, and they therefore generally increase the likelihood that sound will become unreasonable noise as defined in this article, or that sound will violate the noise level standards set forth in this article;
  - (2) Sound amplification devices used to provide entertainment, are generally used and intended to attract persons to the site where such devices are used;
  - (3)

Within many areas of the city are located non-residential uses of property, such as restaurants and bars, that are within close proximity to residential areas, and the tendency of such commercial uses to utilize sound amplification devices to attract customers to their site, also increases the tendency of sounds emanating from such uses to disturb the peace and enjoyment of those persons occupying property in the adjacent residential areas; and

- (4) The areas referred to in subsection (3) above have historically been the subject of numerous noise complaints; and
  - (5) The close proximity of such non-residential uses, particularly where they are concentrated, within close proximity to residential areas requires the use of permitting requirements to help ensure that the provisions of this article are not violated.
- (b) The purpose of this division is to address the tendency of sound amplification devices within the areas described above to increase sound to impermissible levels that violate this article.

(Ord. No. 04-173, § 3, 4-21-2004)

Sec. 42-242. - Sound permits for use of amplified sound equipment.

- (a) No outdoor amplified sound equipment may be located outdoors on any nonresidential property where such equipment is located within 1,000 feet of a residential area, unless the person owning or occupying the property has a valid, current sound permit. For purposes herein, sound equipment shall also be deemed to be "located outdoors" if (i) affixed or attached to the exterior of the structure; (ii) set in or near a window or other opening, such that the sound is directed away from the enclosed structure or toward any outside areas of the property on which the equipment is located; or (iii) located within an outdoor seating area.
- (b) Only the following types of uses shall be authorized to obtain sound amplification permits in accordance with this section:
  - (1) Restaurants and bars with 50 or more indoor seats, where they have a permanent, fixed outdoor seating area as part of their approved site plan;
  - (2) Hotels, motels and accommodations located east of Atlantic Avenue.
- (c) Sound permits shall be valid for a period of six months from the date of issuance, unless suspended pursuant to section 42-245.

(Ord. No. 04-173, § 3, 4-21-2004)

Sec. 42-243. - Application requirements and procedures.

- (a) Application for sound permits shall be made to the permits and licensing division, and shall include all information necessary to assure compliance with this article, including:
  - (1) Name, address and phone number of the owner of the property and any persons having charge over the property on which the sound equipment will be located.
  - (2) Clear and legible drawings with description showing the location and type of sound equipment that will be used, in relation to the property boundaries and any permanent structures located on the property.
- (b) All permit applications shall be approved or denied within 14 calendar days after submission. Any application not specifically denied within the 14-calendar [day] period shall be deemed granted.
  - (1) For oceanfront properties, no sound permit shall be issued unless the information provided by the applicant indicates that the sound amplification equipment will be oriented and located parallel to the bulkhead line, so that sound is projected directly towards the ocean, unless, the information provided shows that sound barriers or other means of noise attenuation shall be placed so as to substantially reduce the amplified sound that would otherwise impact adjacent properties or adjacent street right-of-way.
  - (2) For all other properties, no sound permit shall be issued unless the information provided by the applicant indicates that the sound amplification equipment will be oriented toward the interior of the property, unless the information provided shows that sound barriers or other means of noise

attenuation shall be placed so as to substantially reduce the amplified sound that would otherwise impact adjacent properties or adjacent street right-of-way.

The sound permit shall include as an attachment or incorporate by reference, a plan or sketch indicating location and orientation of the sound equipment, as well as the type and location of sound barriers or other means of attenuation.

- (d) The permits and licensing administrator shall notify an applicant in writing no later than ten days of a decision to deny a sound permit. The written notice shall include a statement as to why the permit has been denied, and a statement that the permittee has the right to appeal denial in accordance with section 42-246 of this Code. A person whose application for sound permit is denied may appeal the decision as provided in section 42-246. If no appeal is timely filed in accordance with section 42-246, the denial shall be deemed to be final administrative action.

(Ord. No. 04-173, § 3, 4-21-2004)

Sec. 42-244. - Conditions of compliance.

A permittee shall comply with each of the following conditions:

- (1) The permittee shall not use, or suffer or permit the sound amplification equipment to be used, to produce noise that is prohibited by section 42-214 of this Code.
- (2) The permittee shall, upon request by a city police or code enforcement officer, turn the amplification equipment off to allow the officer to obtain sound readings for purposes of measuring compliance with the noise level standards set forth in section 42-215.
- (3) The permittee shall operate the sound equipment permitted hereunder, solely from 11:00 a.m. until midnight, except when the city commission by resolution establishes alternate permissible hours for declared special events.
- (4) The sound equipment, and any sound barriers or other attenuation barriers included in the permit, shall at all times be located and oriented in accordance with subsection 42-243(b) of this Code; and
- (5) The sound equipment and any sound barriers or other attenuation devices approved as part of the permit, shall comply with any applicable requirements of the Florida Building Code, including any local amendments which the city may adopt from time to time.

(Ord. No. 04-173, § 3, 4-21-2004)

Sec. 42-245. - Suspension of sound permits.

- (a) The permits and licensing director shall be authorized to suspend a sound permit issued hereunder:
- (1) For up to 30 days whenever the permittee has failed to comply with a condition of compliance as set forth in section 42-244;
  - (2) For up to 60 days whenever the permittee refuses to comply with subsection 42-244(2); and
  - (3) For up to 90 days, whenever a court of law or the code enforcement board has adjudicated the permittee to be in violation of subsection 42-244(1).
- (b) In determining whether to suspend a sound permit and the duration of suspension, the permits and licensing director shall consider the harm to public safety and the negative effects on the use and enjoyment of neighboring properties, the intent of the permit holder, the extent, duration and repetition of the violation, previous violations, any previous warnings or advisements, and the breadth of the record of information.
- (c) Whenever the permits and licensing administrator suspends a sound permit in accordance with subsection (a) or (b) above, the administrator shall notify the permittee in writing at the address indicated on the permit application. The written notice shall contain a summary of the violation and a statement that the permittee has the right to appeal in accordance with section 42-246 of this Code. If no appeal is timely filed in accordance with section 42-246, the denial shall be deemed to be a final administrative action.

(Ord. No. 04-173, § 3, 4-21-2004)

Sec. 42-246. - Appeals.

Appeals of any determination to deny a permit application or suspend a permit under this division may be made as follows:

- (1) The person whose permit application has been denied or whose permit was suspended shall within ten days of receipt of the written notice of denial of a permit application or suspension, file with the city manager's office a written request for a hearing before the city manager.
- (2) The hearing before the city manager shall to be held within five working days of the receipt of the appeal. Written notice of the hearing shall be provided to the appellant no less than three days before the appeal, at the address provided by the written request for hearing. During the hearing, the appellant may present evidence and may be represented by legal counsel, but formal rules of evidence shall not apply. At the close of hearing, and without delay, the city manager shall affirm, modify or reverse the decision, utilizing the applicable criteria set forth in this code for issuance of sound permit or suspension of sound permit, as the case may be.
- (3) Whenever an appeal has been made to a suspension of permit, the filing of the timely filing of the appeal shall stay the suspension until the city manager has made the decision regarding the appeal. If the city manager modifies a suspension, the city manager may not impose a suspension greater than the period of suspension under appeal. The decision of the city manager shall be deemed the city's final administrative action.
- (4) The status or disposition of a criminal prosecution of the permit holder for a violation of this article arising out of the same facts or incident giving rise to the denial or suspension of a permit, shall not effect or be a bar to the administrative proceedings provided in this section.

(Ord. No. 04-173, § 3, 4-21-2004)

Secs. 42-247—42-260. - Reserved.

DIVISION 3. - ENFORCEMENT

Sec. 42-261. - Limitations on enforcement.

The determination whether to enforce the provisions of this article, whether through the denial or suspension of a permit, or the imposition of penalties as described below, shall not be based upon the type or content of the speech produced, or by the viewpoint of the speaker.

(Ord. No. 04-173, § 3, 4-21-2004)

Sec. 42-262. - Penalties.

The provisions of this article may be enforced and violations punished by any of the following methods:

- (1) Any person violating this article may be punished as provided in section 1-14 of this Code.
- (2) The code enforcement board shall have jurisdiction to enforce the provisions of this article. The board's jurisdiction shall extend to any alleged violation of this article. The board's jurisdiction is in addition to any other remedy set forth in this article.

This article does not restrict the right of any person to proceed under F.S. § 60.05 against any public nuisance.

(Ord. No. 04-173, § 3, 4-21-2004)

[Secs. 42-263—42-274. - Reserved.]

ARTICLE V. - NOISE-CREATING CONDUCT ON PUBLIC RIGHT-OF-WAY<sup>[7]</sup>

*Footnotes:*

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**Editor's note**—Ord. No. 04-173, § 2, adopted April 21, 2004, renumbered the provisions of art. V to read as herein set out. See the Code Comparative Table for a detailed analysis.

Sec. 42-275. - Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them:

*City* means the City of Daytona Beach, Florida.

*Noise-creating device* means any electrical, mechanical, or chemical device or instrument, or combination thereof, which creates noise during its operation by a person.

*Operation* means actual control by a person.

*Public right-of-way* means any street, roadway, alley, sidewalk or other area deeded or dedicated for public travel or transportation purposes.

(Ord. No. 02-300, § 1, 6-5-2002; Ord. No. 04-173, § 2, 4-21-2004)

**Note**— Formerly § 42-214.

Sec. 42-276. - Exceptions.

The provisions of this article shall not apply to the following activity or conduct:

- (1) Expression or communication protected by the First Amendment to the Constitution of the United States.
- (2) Any activity or conduct the regulation of which has been preempted to the State of Florida.
- (3) Any activity expressly and exclusively regulated by the city's land development code.
- (4) Any noise created by a public officer or employee in the lawful performance of duty.
- (5) Any noise for which a permit has been issued by an authority having jurisdiction to issue the permit.
- (6) The sounding of any signaling device permitted by law.

(Ord. No. 02-300, § 1, 6-5-2002; Ord. No. 04-173, § 2, 4-21-2004)

**Note**— Formerly § 42-215.

Sec. 42-277. - Creation of certain noises upon public right-of-way prohibited.

- (a) No person, while occupying any public right-of-way in the city, shall operate any noise-creating device for the purpose of drawing attention to the source of the noise.
- (b) The prohibitions of this section shall include, but not be limited to, the following activity or conduct:
  - (1) Discharging fireworks or any exploding device.
  - (2) Firing a starter pistol.
  - (3) Sounding a bell or whistle.
  - (4) Rapid throttle advance (revving) of an internal combustion engine resulting in increased noise from the engine.

(Ord. No. 02-300, § 1, 6-5-2002; Ord. No. 04-173, § 2, 4-21-2004)

**Note**— Formerly § 42-216.

Sec. 42-278. - Penalty.

Any person who violates section 42-216 above shall be punished as provided in section 1-14 of the City Code of Ordinances.



(Ord. No. 02-300, § 1, 6-5-2002; Ord. No. 04-173, § 2, 4-21-2004)

**Note**— Formerly § 42-217.