

ARTICLE II. - NOISE CONTROL REGULATIONS²¹

Footnotes:

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Editor's note—Ord. No. 4136-08, § 1, adopted April 21, 2008, amended Art. II in its entirety to read as herein set out. Former Art. II, §§ 34-31—34-44, pertained to similar subject matter and derived from Ord. No. 4105-08, § 1, adopted Mar. 10, 2008.

Sec. 34-31. - Purpose.

This article is enacted to protect, preserve, and promote the health, safety, welfare, peace and quiet of the inhabitants and visitors of the City of West Palm Beach through the reduction, control, and prevention of loud and raucous noise, or any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of the city's inhabitants and visitors.

(Ord. No. 4136-08, § 1, 4-21-2008)

Sec. 34-32. - Findings.

- (a) Loud and raucous noise degrades the environment of the city to a degree that:
 - (1) Is harmful to the health, welfare, and safety of its inhabitants and visitors;
 - (2) Interferes with the comfortable enjoyment of life and property;
 - (3) Interferes with the well being, tranquility, and privacy of the home; and
 - (4) Both causes and aggravates health problems.
- (b) Both the effective control and the elimination of loud and raucous noise are essential to the health and welfare of the city's inhabitants and visitors, and to the conduct of the normal pursuits of life, including recreation, work, and communication.
- (c) The city has a substantial interest in protecting citizens from unwelcome noise.
- (d) The use of sound amplification equipment creates loud and raucous noise that may, in a particular manner and at a particular time and place, substantially and unreasonably invade the privacy, peace, and freedom of inhabitants of, and visitors to, the city.
- (e) The city has a substantial interest in protecting its merchants from unwelcome noise that has the effect of preventing the transaction of business due to excessive noise.
- (f) The city has a substantial interest in preserving quiet in areas surrounding health care facilities.

(Ord. No. 4136-08, § 1, 4-21-2008; Ord. No. 4336-11, § 1, 3-7-2011)

Sec. 34-33. - Scope.

This article applies to the control of all sound originating within the jurisdictional limits of the city.

(Ord. No. 4136-08, § 1, 4-21-2008)

Sec. 34-34. - Definitions.

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

Amplified sound means a sound augmented by any electronic or other means that increases the sound level or volume.

Code enforcement officer means an authorized employee or agent of the city whose duty it is to ensure code compliance, including but not limited to inspectors or the city's code enforcement department and police officers.

Emergency work means any work performed for the purpose of remedying conditions that create an imminent peril to life, health or property.

Plainly audible means the sound can be clearly heard by a person of normal sensibilities using only unaided auditory senses.

Property line means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by a person from that owned by another person, but not including intrabuilding real property divisions.

Receiving property means any residence or place of business or other property into which sound, not originating therefrom, is traveling.

Residence means any occupied room or rooms connected together containing sleeping facilities, including single- and multiple-family homes, townhomes, apartments, condominium units, and hotel and motel rooms.

Sound source means the place from which sound emanates, including without limitation a speaker, loudspeaker, or other sound-producing instrument, motor vehicle, person, animal or bird.

Special magistrate means a hearing officer appointed pursuant to chapter 26 of this Code.

Uninvited noise means noise not originating on the receiving property.

(Ord. No. 4136-08, § 1, 4-21-2008; Ord. No. 4505-14, § 1, 2-3-2014)

Sec. 34-35. - Noises; unnecessary and excessive prohibited.

It shall be unlawful for any person to make, continue, or cause to be made or continued any unreasonably loud, excessive, unnecessary or unusual noise. The following acts, among others, are declared to be unreasonably loud, excessive, unnecessary or unusual noises in violation of this section, but this enumeration shall not be deemed to be exclusive, namely:

- (1) Horns, signaling devices, etc. The sounding of any horn or signaling device on any automobile, motorcycle, bus or other vehicle on any street or public place of the City, except as a danger warning; the creation by means of any such signaling device of any unreasonably loud or harsh sound; and the sounding of any such device for any unnecessary and unreasonable period of time.
- (2) Radios, televisions, phonographs, etc. The using, operating, or permitting to be played, used or operated any radio receiving set, television set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such manner as to be plainly audible at a distance of 100 feet

from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.

- (3) Animals, birds, etc. The owning, harboring, possessing or keeping of any dog, animal or bird which causes frequent, habitual or long continued noise which is plainly audible inside of a receiving property across a property line or in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants.
- (4) Whistles. The blowing of any locomotive whistle or whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of fire or danger or upon request of the proper municipal or County authorities.
- (5) Exhausts. The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, or motor vehicle except through a muffler or other device which will effectively prevent unreasonably loud or explosive noises therefrom.
- (6) Defect in vehicle or load. The use of any automobile, motorcycle, jet ski, water bike, recreational vehicle, dirt bike or motor vehicle so out of repair, so loaded or in such manner as to create unreasonably loud or unnecessary grating, grinding, rattling or other noise within a residential area.
- (7) Schools, courts, houses of worship. The creation of any excessive or unreasonably loud noise on any street adjacent to any school, institution of learning, house of worship or court while the same are in use, which unreasonably interferes with the workings of such institutions, or which disturbs or unduly annoys the inhabitants of such facilities, provided conspicuous signs are displayed in such streets indicating that it is a school, house of worship or court street.
- (8) Hawkers, peddlers. The shouting and crying of peddlers, hawkers, and vendors which disturbs the peace and quiet of the neighborhood.
- (9) Noises to attract attention. The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of any unreasonably loud or unnecessary noise to any performance, show, sale, display or advertisement of merchandise or within a quiet zone established pursuant to section 34-38 below.
- (10) Loudspeakers, etc. The use or operation on or upon the public streets, alleys and thoroughfares anywhere in this City for any purpose of any device known as a sound truck, loud speaker or sound amplifier or radio or any other instrument of any kind or character which emits therefrom loud and raucous noises and is attached to and upon any vehicle operated or standing upon such streets or public places aforementioned or within a quiet zone established pursuant to section 34-38 below.
- (11) Power tools and landscaping equipment. The operation of noise-producing lawn mowers, lawn edgers, weed trimmers, blowers, chippers, chain saws, power tools and other noise-producing tools which are used to maintain or at a residence out-of-doors between 8:00 p.m. and 7:00 a.m.
- (12) Shouting. Any unreasonably loud, boisterous or raucous shouting in any residential area or within a quiet zone established pursuant to section 34-38 below.

(Ord. No. 4136-08, § 1, 4-21-2008; Ord. No. 4336-11, § 1, 3-7-2011)

Sec. 34-36. - Responsibility for compliance.

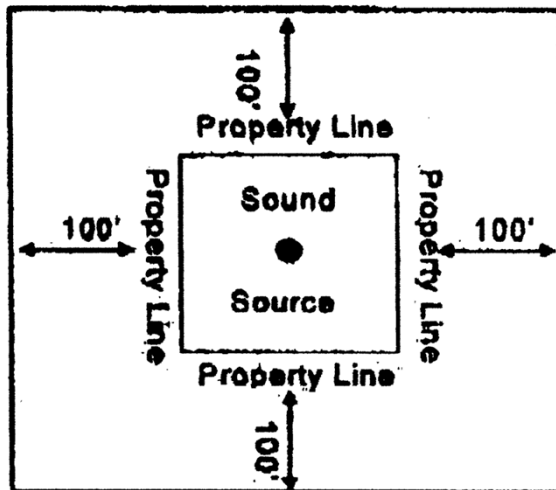
For purposes of this article, any person owning or having responsibility for management of a premises, however temporarily, any performer or disc jockey producing sound upon any premises, any person playing music, any person having control or volume knobs or levels, and the business as named on the occupational license, if applicable, shall be jointly and severally liable for compliance with this article and shall be responsible for any violations of this article.

(Ord. No. 4136-08, § 1, 4-21-2008)

Sec. 34-37. - Noise level in specific area.

- (a) Purpose. The purpose of these regulations is to allow for areas of the city where the ambience contributes to the enjoyment by residents and visitors of uses that feature the serving of food and beverages accompanied by outdoor live and pre-recorded musical entertainment.
- (b) Boundaries. The area for which this section applies shall be located as follows: the southern right of way line of Banyan Boulevard from Tamarind Avenue to North Flagler Drive shall be the northern boundary line; the northern right of way line of Okeechobee Boulevard from Tamarind Avenue to North Flagler Drive shall be the southern boundary line; the eastern right of way line of North Flagler Drive shall be the eastern boundary line; and the western building line of Tamarind Avenue shall be the western boundary line. This area shall be referred to as the downtown area.
- (c) Limitation on noise volume.
 - (1) For purposes of enforcement of this article, the following definition of "unreasonably loud" shall apply for all noises originating within the area as described in subsection (b) of this section:

Uninvited noise shall be deemed unreasonably loud if it is plainly audible at a distance greater than 100 feet away from the property line of the sound source. The 100 feet distance from a sound source shall be measured in a straight line from any point on the property line of the sound source as shown in the accompanying illustration.



Boundaries for Unreasonably Loud Uninvited Noise

- (2) All procedures for enforcement of violations of the noise limitations in subsection (c)(1) of this section and for appeals of notices of violations issued by code enforcement officers shall be as set forth in this article.
- (d) No variances granted. No variances shall be granted from the permissible volume limitations set forth in subsection (c) of this section.
- (e) Applicability of zoning provisions. The regulations set forth in this section shall be supplementary to all other provisions, and the zoning regulations set forth in chapter 94 shall continue to apply within the area.

(Ord. No. 4136-08, § 1, 4-21-2008)

Sec. 34-38. - Sound limitations for health care facilities.

- (a) Purpose. The purpose of these regulations is to create an area surrounding health care facilities that is quiet and free from shouting or other amplified sound.
- (b) Limitations. No person shall shout or, cause to be produced, or allow to be produced, by any means, any amplified sound, including a loudspeaker, drum, radio, phonograph, stereo set, tape or CD player, television, sound amplifier, or other electronic audio instrument or device that produces or reproduces amplified sound on any public street or sidewalk or from private property within 100 feet of the property line of a property housing a health care facility or any other institution reserved for the sick or infirmed, provided that the public streets or sidewalks adjacent to such facilities shall be clearly marked by conspicuous signs identifying those areas. "Health care facility" as used in this subsection, includes, but is not limited to, hospitals, physicians' offices, walk-in medical centers, medical diagnostic centers, surgical centers, and facilities which are licensed, certified or otherwise authorized to perform medical procedures in this state and to provide health services. "Health care facility" shall not include residential homes, convalescent homes or other facilities that provide long term residency. Any health care facility that identifies the facility as being located in a quiet zone in accordance with subsection (c) below shall be subject to the same limitations on amplified sound described in this section within 100 feet of the property line of a property housing such health care facility.
- (c) Signage required. It shall be the duty of each health care facility or owner of such establishment to erect and maintain lampposts or signs in some conspicuous place on every street, avenue or alley in the vicinity of every health care facility, public or private, indicating that the same is a "Quiet Zone." The signs which must meet and conform to the city's sign code shall be placed on such streets, avenues or alleys upon which a health care facility is situated and shall read in a manner similar to, but not restricted to, the following: "Hospital — Quiet Zone" or "Health Care Facility — Quiet Zone."

(Ord. No. 4136-08, § 1, 4-21-2008; Ord. No. 4336-11, § 1, 3-7-2011)

Sec. 34-39. - Temporary permits.

- (a) The mayor is authorized to issue a temporary permit to allow noise when produced by a temporary use or activity as provided in this section. The mayor may prescribe any reasonable conditions necessary to minimize any adverse effect upon the community. A permit granted under this article shall contain all conditions upon which the permit has been granted, including the period of time for which the permit has been granted. Such relief may be granted in the following situations:
 - (1) Code compliance in progress. When an applicant is utilizing best efforts to comply with the noise restrictions in this article, but additional time is required for the applicant to modify his activity to comply and no reasonable alternative is available to the applicant. Such permits may be granted for a period of time not to exceed ten days.
 - (2) Construction. When construction activities pursuant to a valid building permit cannot be carried out in a manner which would comply with sections 34-35, 34-37 and 34-38; provided that all equipment shall be operated in accordance with manufacturers specifications, shall be in good repair and shall utilize all noise baffling methods as specified by the manufacturer, and further provided that such activities shall occur only as follows:
 - a. Between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday; between the hours of 8:00 a.m. and 8:00 p.m., Saturday and Sunday.
 - b. Notwithstanding the provisions set forth in subsection (a)(2)a. of this section, the building official may authorize any construction activity at a particular site earlier than 7:00 a.m. and/or later than 8:00 p.m. The work authorized by the building official pursuant to this subsection (a)(2)b. may be conditioned upon notice to surrounding property owners and tenants.

- (3) Special events. When the applicant seeks to hold an activity or special event for which a permit is required by chapter 78, article VI, of this Code relating to special events and has met all of the city's requirements for obtaining such permit, and the activity or special event cannot be performed or held in a manner that would comply with sections 34-35, 34-37 and 34-38. This section shall also apply to private entities holding leases for use of city owned property within the city.
- (b) Failure to comply with any condition of a temporary permit issued pursuant to this section shall constitute a violation and shall result in enforcement procedures and penalties as set forth in sections 34-41 and 34-42.

(Ord. No. 4136-08, § 1, 4-21-2008; Ord. No. 4591-15, § 1, 9-28-2015)

Sec. 34-40. - Exemptions.

The following uses and activities shall be exempt from the requirements of sections 34-35, 34-37 and 34-38 from the enforcement procedures in this article:

- (1) Cries for emergency assistance and warning calls, including any animal or bird giving a sound of danger or warning under particular circumstances reasonably requiring the need for warning.
- (2) Radios, sirens, horns and bells and other sounds created by police, fire and other emergency response vehicles.
- (3) Parades, fireworks displays, special events and other activities for which a permit has been obtained from the city, pursuant to section 34-39, within such hours and in accordance with such restrictions as may be imposed as conditions for the issuance of the permit.
- (4) Activities on or in municipal and school athletic facilities and on or in publicly owned property and facilities, including public plazas within community development districts ("CDD plazas"), when such activities have been authorized by the public authority owning the properties or facilities or their agents; except where such publicly owned properties other than CDD plazas are under private operation pursuant to a lease or concession agreement.
- (5) Fire alarms and burglar alarms, bells and chimes of churches or other religious institutions; however false burglary alarms shall be subject to enforcement procedures and penalties as set forth in chapter 46, article II, of this Code.
- (6) Locomotives and other railroad equipment and aircraft, to the extent that city regulation is preempted by federal law.
- (7) Noises resulting from emergency work.
- (8) Any noise resulting from activities of a temporary duration permitted pursuant to section 34-39.
- (9) Noise generated by motor vehicles as defined in F.S. § 320.01 when operated and equipped in accordance with requirements set forth in the Florida Statutes.
- (10) Noise resulting from the operation of vessels when operated in compliance with the decibel limitations in F.S. § 327.65. However, noise exceeding the limitations set forth in F.S. § 327.65 shall be subject to enforcement and penalties as set forth in F.S. Ch. 327.

(Ord. No. 4136-08, § 1, 4-21-2008; Ord. No. 4591-15, § 1, 9-28-2015)

Sec. 34-41. - Enforcement by code enforcement officers; notice of violation.

- (a) If a code enforcement officer receives a complaint from a complainant regarding a violation of this article, he shall investigate the complaint and determine whether the violation exists. If the code enforcement officer observes a violation of this article, the inspector shall inform the violator that he

must immediately cease the violation and will be subject to additional penalties if the violation continues and issue a notice of violation to the violator as provided in chapter 26 of this Code. The notice shall inform the violator of the:

- (1) Name of the violator.
 - (2) Date and time of violation.
 - (3) Nature of the violation.
 - (4) Amount of fine for which the violator may be liable pursuant to section 34-42 of this Code or as otherwise provided by law.
 - (5) Instructions and due date for paying the fine.
 - (6) Notice that the violation may be appealed by requesting an administrative hearing within ten days after service of the notice of violation, that failure to do so shall constitute an admission of the violation and waiver of the right to a hearing, and that unpaid fines will result in the imposition of liens which may be foreclosed by the city.
- (b) The notice shall also inform the violator that repeat violations of this article will result in the imposition of larger fines and may also result in revocation of occupational license and/or certificate of use and/or injunctive proceedings as provided by law.

(Ord. No. 4136-08, § 1, 4-21-2008)

Sec. 34-42. - Fines and penalties for violation; appeals; alternate means of enforcement.

- (a) The following civil fines shall be imposed for violations of this chapter:
- (1) First offense, \$250.00 fine.
 - (2) Second offense (within one year of the first offense) and each offense thereafter, \$1,000.00 fine.

For purposes of this section, "offense" shall mean a notice of violation that has not been contested timely or a finding of violation by a special magistrate. A person may receive a separate notice of violation once every hour if a violation has occurred at any time within that period. Each notice of violation shall constitute a separate offense for which a separate fine may be imposed.

- (b) A violator who has been served with a notice of violation shall elect either to:
- (1) Pay the civil fine in the manner indicated on the notice; or
 - (2) Request an administrative hearing before a special magistrate to appeal the decision of the code inspector that has resulted in the issuance of the notice of violation.
- (c) The named violator shall request an administrative hearing before the special magistrate by filing a written request for hearing with the special magistrate's office within ten days of the date of the notice of violation. A courtesy notice shall be provided to the complainant of any hearing regarding the notice of violation, and the complainant may testify at such hearings. Failure to give such notice shall not be a cause for continuance or cancellation of any scheduled hearing of the matter.
- (d) If the named violator after notice fails to pay the civil fine or fails to timely request an administrative hearing before a special magistrate, the special magistrate shall be informed of such failure by report from the code enforcement officer. Failure of the named violator to appeal the notice of violation within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the special magistrate. A waiver of the right to an administrative hearing shall be treated as an admission of the violation and penalties may be assessed accordingly.
- (e) Any party aggrieved by the decision of a special magistrate may appeal that decision to a court of competent jurisdiction as provided in F.S. § 162.11.

- (f) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil fines. A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other real or personal property owned by the violator and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After three months from the filing of any such lien that remains unpaid, the city may foreclose or otherwise execute on the lien.
- (g) As an alternative or additional means of enforcement, the city may institute proceedings to revoke or suspend an occupational license and/or certificate of use or seek injunctive relief. In cases of recurring violations, the code enforcement officer may issue a citation for prosecution before the special magistrate as provided in this chapter wherein, upon a finding of violation by the special magistrate, a per diem fine may be imposed. A violation shall be considered recurring when a person or entity has received three notices of violation within a period of one month.
- (h) As a further alternative or additional means of enforcement, the city may employ the alternative code enforcement procedures for a civil infraction described in chapter 26, article III of this Code.

(Ord. No. 4136-08, § 1, 4-21-2008; Ord. No. 4505-14, § 1, 2-3-2014)

Sec. 34-43. - Motor vehicle alarms.

- (a) Definition. The following term shall have the following meaning for purpose of this section:

Alarm system means a motor vehicle siren or home alarm system contained in or appurtenant to a motor vehicle, designed to activate and sound in the event of a break-in or attempted break-in of the vehicle.

- (b) Violation generally. It shall be unlawful for any motor vehicle equipped with an alarm system to activate and emit a siren or home noise, audible at a distance of 100 feet intermittently or continuously within a period in excess of 30 minutes. Any person who has custody of any such offending motor vehicle shall be deemed in violation of this section.
- (c) Violation deemed public nuisance. A violation of this section on the public streets or areas within the city is hereby declared public nuisance which may be abated by the removal of such vehicle upon authorization of a law enforcement officer. Prior to removing such vehicle, the law enforcement officer shall afford the owner or custodian of such vehicle the opportunity to disconnect or deactivate the alarm system at the scene. Otherwise, the vehicle shall be removed to an authorized facility. The law enforcement agency shall ascertain the name and address of the registered owner of such vehicle and provide written notice by certified mail, return receipt requested, within 24 hours of such removal, the reason(s) for the removal, and the place where such vehicle has been removed. The fees assessed for the removal of the vehicle may be appealed by filing a complaint in the county court and posting with the court a cash or surety bond or security equal to the amount for the removal and/or storage of the vehicle to ensure the payment of such in the event the owner or custodian of the vehicle does not prevail.
- (d) Penalty. A violation of this section on private property shall cause the person who owns or has custody of the offending vehicle to be fined \$50.00. Any duly designated law enforcement officer and/or code enforcement officer is authorized and empowered to enter without force upon private property in order to detect and issue a citation or notice of violation to and upon the owner or custodian of the offending motor vehicle. The citation or notice of violation may be appealed in accordance with the procedures set forth in chapter 26 of this Code.
- (e) Exception. It shall not be a violation of this section if it is determined by the law enforcement officer and/or code enforcement officer that the siren or horn noise has been triggered by the unauthorized opening of the hood, truck or door(s) of the vehicle, by the breaking or attempted breaking of a window or by lightning, thunderstorms, or severe weather conditions.

(Ord. No. 4136-08, § 1, 4-21-2008)

Sec. 34-44. - Nuisance.

Any violation of this article shall constitute a nuisance. The city attorney may bring suit on behalf of the city or any affected citizen may bring suit in his name, against the person or persons causing or maintaining the violation, and against the owner/agent of the building or property on which the violation exists. Relief may be granted according to the terms and conditions of F.S. Ch. 60, relating to abatement of nuisances, or pursuant to section 34-42. In any such action, the city or affected citizen, if the prevailing party, shall be awarded costs, including reasonable attorneys fees.

(Ord. No. 4136-08, § 1, 4-21-2008)

Cross reference— Abatement of nuisances, § 26-101 et seq.

Secs. 34-45—34-70. - Reserved.