

ORDINANCE NO. 2016-2091

AN ORDINANCE OF THE CITY OF NEW PORT RICHEY, FLORIDA, AMENDING ARTICLE II, SECTIONS 14-21 THROUGH 14-25, OF THE NEW PORT RICHEY CODE OF ORDINANCES; RELATING TO SOUND STANDARDS; PROVIDING DEFINITIONS; SPECIFYING VIOLATIONS AND IMPOSING PENALTIES FOR EXCESSIVE SOUND; PROVIDING FOR CONFLICTS, SEVERABILITY AND EFFECTIVE DATE.

WHEREAS, excessive sound within the limits of the City of New Port Richey, Florida is a condition which has existed for some time and the number of excessive sound complaints is increasing; and

WHEREAS, excessive sound is a detriment to the public health, safety, welfare and quality of life of the residents of the City; and

WHEREAS, in 2016 the New Port Richey Police Department conducted a Sound Study to collect data on noise levels at various locations around the City to assess the decibel level of sounds which were the subject of complaints; and

WHEREAS, the City has compiled data from excessive sound complaints made to the New Port Richey Police Department during 2016; and

WHEREAS, local courts have held that Section 877.03 of the Florida Statutes, prohibiting what is often referred to as the “breach of the peace” or “disorderly conduct,” can no longer be used to address excessive sound issues; and

WHEREAS, on December 13, 2012, the Florida Supreme Court in Catalano v. State, 104 So. 3d 1069 (Fla. 2012), struck down Section 316.3045 of the Florida Statutes as unconstitutional as applied to traffic violations for the operation of radios or other mechanical sound making devices or instruments in vehicles; and

WHEREAS, it is declared as a matter of legislative determination and public policy that the provisions and prohibitions herein are necessary in the public interest; and it is further declared that the provisions and prohibitions herein are in pursuance of and for the purpose of securing and promoting the public health, safety, welfare and quality of life.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW PORT RICHEY, FLORIDA, that:

SECTION 1. Article II, Sections 14-21 through 14-25 are hereby amended and replaced in their entirety with the following:

ARTICLE II. EXCESSIVE SOUND.

Sec. 14-21. Application.

This Ordinance shall apply to all properties in the City, unless a City Council policy, ordinance, or an agreement approved by the City Council is developed to apply sound requirements to specifically described property.

Sec. 14-22. Definitions.

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

A-Weighted Sound Level means the sound pressure level in decibels as measured with a sound level meter using the A-weighting network as described in ANSI S1.4-1983 issued by the American National Standards Institute. The unit of measurement is the dB(A).

C-Weighted Sound Level means the sound pressure level in decibels as measured with a sound level meter using the C-weighting network as described in ANSI S1.4-1983 issued by the American National Standards Institute. The unit of measurement is the dB(C).

Decibel (dB) means a unit for measuring the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).

Non-Residential Property means any property which is not *Residential Property*.

Residential Property means property which satisfies all of the following criteria: (a) the property contains habitually occupied sleeping quarters, and (b) the property is located in one of the following zoning districts: R-1, R-2, R-3, MF-10, MF-14, MF-30 Districts.

Sound means a physical disturbance causing an oscillation in pressure in a medium, such as air, that is capable of being detected by the human ear or a sound measuring instrument.

Sound Level means the weighted sound pressure level as measured in dB(A) or dB(C) by a sound level meter.

Sound Level Meter means an instrument, including a microphone, an amplifier, an output meter, and frequency weighting networks, for the measurement of sound levels.

Sec. 14-23. Maximum Permissible Sound.

- (a.) No person shall cause, suffer, allow, or permit the operation of any source of sound in a manner as to create a sound level at a receiving property that exceeds the sound limits listed in Table 1.

Table 1	
Times	Sound Limits
Residential Property	
7:00 a.m. to 10:00 p.m.	55 dB(A) or 65 dB(C)
10:01 p.m. to 6:59 a.m.	50 dB(A) or 60 dB(C)
Non-Residential Property	
7:00 a.m. to 11:00 p.m.	70 dB(A) or 85 dB(C)
11:01 p.m. to 6:59 a.m.	55 dB(A) or 65 dB(C)

- (b.) Sound Level Measurements.
- (1.) Outdoor sound level measurements shall be taken on or within the real property line of the noise emitting property.
 - (2.) The measurement of sound shall be made with a sound level meter which complies with the standards for a Type 2 sound level meter in accordance with ANSI S1.4-1983 issued by the American National Standards Institute. The slow response setting of the sound level meter shall be utilized for the measurement.

Sec. 14-24. Exemptions.

The following shall be exempt from the sound level limits contained in Section 14-23:

- (a) Lawn mowers and yard maintenance equipment operated between 7:00 a.m. and 7:00 p.m. when operated with all manufacturer's standard mufflers and noise reducing equipment in use and in proper operating condition.
- (b) Construction operations between 7:00 a.m. and 7:00 p.m. Monday through Saturday, and between 10:00 a.m. and 7:00 p.m. on Sunday, for which building permits have been issued, or for construction operations not requiring permits due to the scope of work or ownership of the project by an agency of government; provided all equipment is operated in accord with the manufacturer's specifications and with all standard equipment, manufacturer's mufflers and noise reducing equipment in use and in proper operating condition.
- (c) Non-amplified human voice.
- (d) Non-amplified sounds emitting from lawful public assembly or public speaking.
- (e) Sounds emitting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency.
- (f) Sounds from safety signals, warning devices, and emergency pressure relief valves.
- (g) Electrical or mechanical equipment or devices, including compressors, generators, reciprocating engines, air handlers, and HVAC units, installed on or in buildings or facilities, leased, owned or operated by governmental entities including the City of New Port Richey, Pasco County, the Pasco County School District, and the State of Florida.
- (h) Sounds from emergency generators when there is loss of power for any cause other than non-payment of utility services.
- (i) Aircraft operated in conformity with, or pursuant to, federal law, federal air regulations and air traffic control instruction.
- (j) Sounds emitting from the normal operations of interstate motor and rail carriers, to the extent that local regulation of sound levels of such vehicles has been preempted by the Noise Control Act of 1972 (42 U.S.C. § 4901 et seq.) or other applicable federal laws or regulations.
- (k) Sounds from the operation of motor vehicles to the extent regulated by Section 316.293 of the Florida Statutes.
- (l) Sounds emitting from organized sporting events; permitted fireworks displays; permitted parades; permitted events on public property, including public rights of way; or other activity or event(s) specifically permitted by the City of New Port Richey.

- (m) Sanitation operations including the unloading, emptying or collection of any waste or recycling container.
- (n) Sounds emitting from vehicles or equipment owned or operated by governmental entities including the City of New Port Richey, Pasco County, the Pasco County School District, the State of Florida, or their designees, when such vehicles or equipment are engaged in emergency operations, including operations during or following storms, accidents, or other catastrophes.
- (o) Sounds emitting from vehicles or equipment owned or operated by governmental entities including the City of New Port Richey, Pasco County, the Pasco County School District, the State of Florida, or their designees, when such vehicles or equipment are engaged in construction operations.

Sec. 14-25. Enforcement.

- (a) Any New Port Richey Police Department Officer or any Code Enforcement Officer, may issue citations for violation(s) of Sec. 14-24.
- (b) Upon arrival at any property which is the subject of complaint that sound exceeds the maximum levels prescribed in Sec. 14-24, the Police Officer or Code Enforcement Officer responding to the complaint shall attempt to notify the owner of the property, or the person responsible for sound, that sound emitting from the property is in violation of Sec. 14-24. Following notice from the responding officer, the owner or person responsible for the sound shall have ten (10) minutes to voluntarily reduce the sound to a level which is in compliance with Sec. 14-24. If the sound is reduced within the ten (10) minute voluntary compliance period, no citation shall be issued under this section except as follows:
 - (1.) If the property which is the subject of a complaint, has been the subject of a complaint within the prior six (6) months to which a Police Officer or Code Enforcement Officer responded, and a voluntary compliance notice was issued on such prior occasion, a citation may be issued for violation of Sec. 12-94 without notice or opportunity for voluntary compliance pursuant to this subsection. In the event that a Police Officer or Code Enforcement Officer is refused entrance or access to the property which is the source of sound in violation of Sec. 12-94, or if a Police Officer or Code Enforcement Officer is unable to determine the person responsible for the excessive sound, a citation may be issued for violation of Sec. 14-24 without notice or opportunity for voluntary compliance pursuant to this subsection.

- (c) In the event that a Police Officer or Code Enforcement Officer is refused entrance or access to the property which is the source of sound in violation of Sec. 14-24, or if a Police Officer or Code Enforcement Officer is unable to determine the person responsible for the excessive sound, there shall be a rebuttable presumption that the property owner was responsible for the sound in violation of Sec. 14-24. In such event, a citation may be issued to the property owner on record with the Pasco County Tax Collector, as provided in this section. The property owner may rebut the presumption of responsibility by contesting the citation and establishing that the property owner was not the cause or the source of the excessive sound.
- (d) Citations shall be provided to any violator including any property owner by hand delivery by any Police Officer or Code Enforcement Officer, or by certified mail, return receipt requested.
- (e) Any person cited for violation of Sec. 14-24 shall be brought before the City's Special Magistrate, or shall be brought before the Pasco County Court. The City shall have discretion to determine the venue for adjudication of the violation.
- (f) A fine of \$150 shall be imposed for a first violation; \$250 for a second violation; and \$500 for a third and any subsequent violation. It shall be a separate violation if sound exceeding the limits in Sec. 12-94, continues or re-occurs, after the passage of fifteen (15) minutes, following notice of the violation, issued by a Police Officer or Code Enforcement Officer, to the property owner, or person responsible for or causing the excessive sound.
- (g) A certified copy of the order imposing any fine under this division may be recorded as a lien on the property of any violator for collection in accordance with City Codes.

Sec. 14-26. Additional Remedies; Injunctions.

The operation or maintenance of any equipment, device, instrument, vehicle or machinery in violation of this division which endangers the comfort, repose, health and peace of residents in the area is declared to be a public nuisance and the City is authorized to pursue any and all remedies therefor, including petition to a court of competent jurisdiction for a restraining order or injunction. Nothing herein shall be construed to limit any private right of action.

SECTION 2. CONFLICTS.

Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements shall apply.

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SECTION 3. SEVERABILITY.

The provisions of this ordinance are severable, and it is the intention of the City Council of the City of New Port Richey, Florida to confer the whole or any part of the powers herein provided. If any of the provisions of this ordinance shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair the remaining provisions of this ordinance. It is hereby declared to be the legislative intent of the City Council that this ordinance would have been adopted had such unconstitutional provision not been included herein.

SECTION 4. INCLUSION IN CODE.

It is the intention of the City Council that the provisions of this ordinance shall become and be made a part of New Port Richey Code; and that the sections of this ordinance may be renumbered or re-lettered and the word "Ordinance" may be changed to "Section", "Article", or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 5. This ordinance shall take effect September 1, 2016.

The above and foregoing Ordinance was read and approved on first reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida, this _____ day of _____, 2016 and adopted on second reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida, this _____ day of _____, 2016.

ATTEST:

By: _____
Doreen M. Summers CAP-OM, CMC
City Clerk

By: _____
Robert Marlowe
Mayor-Council Member

(Seal)

APPROVED AS TO FORM AND LEGALITY
FOR THE SOLE USE AND RELIANCE OF THE
CITY OF NEW PORT RICHEY, FLORIDA:

City Attorney, Joseph A. Poblick

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