

ORDINANCE NO. 2016-2091

AN ORDINANCE OF THE CITY OF NEW PORT RICHEY, FLORIDA, PROVIDING FOR THE REPEAL AND REPLACEMENT OF ARTICLE II, SECTIONS 14-21 THROUGH 14-25, OF THE NEW PORT RICHEY CODE OF ORDINANCES; PERTAINING TO NOISE; PROVIDING DEFINITIONS OF TERMS; PROVIDING NOISE LIMITATIONS; PROVIDING EXEMPTIONS; PROVIDING PENALTIES FOR EXCESSIVE NOISE; PROVIDING FOR ENFORCEMENT; PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, excessive noise within the City limits of the City of New Port Richey, Florida is a recurring condition which has resulted in excessive noise complaints increasing in the City;

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

WHEREAS, the New Port Richey Police Department conducted a sound study to collect data on noise levels at various locations throughout the City to assess the decibel level of sounds which were the subject of complaints;

WHEREAS, the City has compiled data from excessive noise complaints made to the New Port Richey Police Department;

WHEREAS, the City's current sound regulations do not provide clearly defined objective limitations on levels of permissible sounds within the City; 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 in the City.

**NOW, THEREFORE, THE CITY OF NEW PORT RICHEY, FLORIDA
HEREBY ORDAINS:**

Section 1. Article II, Sections 14-21 through 14-25, of the Code of Ordinances, pertaining to noise and providing as follows, is hereby repealed (strikeout text shows deleted matters):

~~Sec. 14-21. -- Prohibited generally.~~

~~It shall be unlawful for any person to willfully make, continue or cause to be made or continued any loud and raucous noise, which terms shall mean any sound which, because of its volume level, duration and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities within the limits of the city. The term includes the kinds of noise generated by the activities enumerated in section 14-22, except as provided in section 14-24. The term shall be limited to loud and raucous noise heard upon the public streets, in any public park, in any school or public building or upon the grounds thereof while in use, in any church or hospital or upon the grounds thereof while in use, upon any parking lot open to members of the public as invitees or licensees, or in any occupied residential unit which is not the source of the noise or upon the grounds thereof, and in any event from a location not less than fifty (50) feet from the source of the noise, measured in a straight line from the radio, loudspeaker, motor, horn or other noise source.~~

~~Sec. 14-22. -- Enumeration.~~

~~The following acts, as limited by section 14-21 and subject to the exceptions provided in section 14-24, are declared to be public nuisances in violation of section 14-21, namely:~~

- ~~(1) *Engine exhaust.* The discharge into the open air of the exhaust of any steam engine or stationary internal combustion engine except through a muffler or other device which will effectively prevent loud and raucous noises therefrom.~~
- ~~(2) *Pile drivers, etc.* The operation between the hours of 9:00 p.m. and 7:00 a.m. on any day or at any time on Sunday, of any pile driver, steam shovel, pneumatic hammer, derrick, dredge, steam or electric hoist or other appliance, the use of which is attended by loud and raucous noise.~~
- ~~(3) *Horns, signaling devices, etc.* The sounding of any horn, whistle or other audible signaling device so as to create a loud and raucous noise.~~
- ~~(4) *Radios, amplifiers, phonographs, etc.* The using, operating or permitting to be played, used or operated any radio, amplifier, musical instrument, phonograph or other device for the producing or reproducing of sound in such manner as to cause loud and raucous noise.~~
- ~~(5) *Sound trucks.* No amplifier or loudspeaker in, upon or attached to a sound truck or other device for amplifying sound shall be operated or permitted to operate within the city for advertising purposes or to attract the attention of the public.~~
- ~~(6) *Yelling, shouting, etc.* Yelling, shouting, whistling or singing at any time or place so as to create a loud and raucous noise between the hours of 9:00 p.m. and 7:00 a.m. on any day.~~
- ~~(7) *Animals, birds, etc.* The keeping of any animal or bird which habitually causes a loud and raucous noise.~~

- ~~(8) *Defect in vehicle or load.* The use of any motor vehicle so out of repair, so loaded or in such manner as to create loud grating, grinding, rattling or other loud and raucous noise or which is not equipped with a muffler in a good working order and in constant operation so as to prevent loud and raucous noise.~~
- ~~(9) *Construction or repairing of buildings.* The erection (including excavating), demolition, alteration or repair of any building so as to create a loud and raucous noise other than between the hours of 7:00 a.m. and 9:00 p.m. on any day or at any time on Sunday, except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the building director, which permit may be granted for a period not to exceed three (3) working days or less while the emergency continues and which permit may be renewed for successive periods of three (3) days or less while the emergency continues. If the building director should determine that the public health and safety necessitates the issuance of such a permit and will not be impaired by the erection, demolition, alteration or repair of any building or the excavation of streets and highways within the hours of 9:00 p.m. and 7:00 a.m. or on Sunday, he may grant permission for such work to be done within such hours or within a shorter time period during such hours, upon application being made at the time the permit for the work is used or during the progress of the work.~~
- ~~(10) *Schools, public buildings, churches, hospitals.* The creation of any loud and raucous noise heard within any school, public building, church or to any hospital, or the grounds thereof, while in use, which interferes with the workings of such institution, or which disturbs or annoys patients in the hospital.~~
- ~~(11) *Noises to attract attention.* The use of any drum or other instrument or device to create loud and raucous noise.~~

~~Sec. 14-23. — Persons responsible.~~

~~Any person, owner, agent or supervisor in charge of operating, ordering, directing or allowing the operation or maintenance of the device or machine creating a noise as prohibited in this chapter, shall be deemed guilty of violating this chapter.~~

~~Sec. 14-24. — Exceptions.~~

~~The term "loud and raucous noise" does not include noise or sound generated by the following:~~

- ~~(1) Cries for emergency assistance and warning calls.~~
- ~~(2) Radios, sirens, horns and bells on police, fire and other emergency response vehicles.~~
- ~~(3) Parades, fireworks displays and other special events for which a permit has been obtained from the city, within such hours as may be imposed as a condition 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, provided that such activities have been authorized by the owner of such property or facilities or its agent.~~
- ~~(5) Fire alarms and burglar alarms, prior to the giving of notice and a reasonable opportunity for the owner or tenant in possession of the premises served by any such alarm to turn off the alarm.~~
- ~~(6) Religious worship activities, including but not limited to bells and organs.~~
- ~~(7) Locomotives and other railroad equipment, and aircraft.~~
- ~~(8) Bells, chimes, musical instruments or similar sounds emitted from a vehicle, provided that such vehicle is being used for ice cream vending, provided that such sound is not emitted before sunrise or after sunset during daylight savings time or after 8:00 p.m. at all other times, provided that such sound is not plainly audible at a distance of one hundred (100) feet or more from the motor vehicle; and further provided that such sound is not emitted while such vehicle is stopped, whether temporarily or permanently. Ice cream vendors are specifically prohibited from emitting pre-recorded or amplified sounds or music from any vehicle used for ice cream vending.~~
- ~~(9) Firearms.~~

~~Sec. 14-25. -- Enforcement/penalties.~~

~~Violation of any provision of this chapter shall be deemed a civil infraction. Enforcement of this chapter shall be the responsibility of the city's code enforcement officers and the members of the city police department. Enforcement of this chapter shall be pursuant to Pasco County Administrative Order Number 00-05, and all subsequent amendments thereto, in accordance with Chapter 2, Article VIII of the City Code, or by any other method permitted by the City Code, including without limitation through the use of the city's code enforcement board or an injunctive or other action in circuit court.~~

Section 2. **Article II, Sections 14-21 through 14-25, of the Code of Ordinances, pertaining to noise and providing as follows, is hereby enacted (new matters are underlined):**

ARTICLE II. - EXCESSIVE NOISE.

Sec. 14-21. - Application.

This article 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 article, 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, or such other subsequently enacted standard intended to replace said standard. 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, or such other subsequently enacted standard intended to replace said standard. 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 any zoning district which allows dwelling units, as provided in the Land Development Code.

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 permit, cause, allow, create, or sustain the operation of any source of sound in a manner as to create a sound level emanating from any property that exceeds the sound limits listed in Table 1 for the type of property which is the source of the sound.

Table 1

Residential Property

<u>Times</u>	<u>Sound Limits</u>
<u>7:00 a.m. through 10:00 p.m.</u>	<u>55 dB(A) or 65 dB(C)</u>
<u>10:01 p.m. through 6:59 a.m.</u>	<u>50 dB(A) or 60 dB(C)</u>

Non-Residential

<u>7:00 a.m. through 11:00 p.m.</u>	<u>70dB (A) or 85dB(C)</u>
<u>11:01 p.m. through 6:59 a.m.</u>	<u>55dB (A) or 65dB(C)</u>

(b) Sound level Measurements.

- (1) Outdoor sound level measurements shall be taken from any public or private property adjacent to the property from which the sound being measured reasonably emanates.
- (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, or such subsequently enacted standard intended to replace said standard. 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 of this article:

- (a) Yard and building maintenance machinery, equipment and tools 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; provided all equipment used in the construction operations is operated in accordance 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 voices;
- (d) Non-amplified sounds emanating from lawful public assembly or public speaking;

(e) Authorized emergency vehicles when responding to an emergency call or acting in time of emergency;

(f) Safety signals, warning devices, and emergency pressure relief valves;

(g) Electrical or mechanical equipment in proper operating condition, installed and designed for the type of property or use upon which it is placed, providing air conditioning, heat, ventilation, plumbing or electrical service to the property on which it is placed;

(h) Emergency generators used only during a loss of electrical power for any cause other than non-payment of utility services or failure to obtain or connect to available electrical service;

(i) 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;

(j) Aircraft operated in conformity with, or pursuant to, federal law, federal air regulations and air traffic control instructions;

(k) 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;

(l) Operation of motor vehicles to the extent regulated by Section 316.293 Florida Statutes;

(m) Sounds emanating from permitted sporting events; permitted fireworks displays; permitted parades; permitted events on public property, including public rights of way; or other activities or events specifically permitted by the City of New Port Richey;

(n) Sanitation operations including the unloading, emptying or collection of any waste or recycling container;

(o) Sounds emanating 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; and

(p) Sounds emanating 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 Code Enforcement Officer may issue citations for violation of this article. Such officer shall attempt to locate and issue a citation to the

person causing the sound in violation hereof, or the owner, operator, tenant or occupant of the property from which the sound constituting a violation emanates. If the sound is voluntarily abated to sound levels allowed under this article within ten (10) minutes of the issuance of a verbal warning by the officer, and no prior warnings or citations for violations of this article have been issued to the same person, or concerning the same property, within the preceding twelve (12) month period, no citation shall be issued for said violation. No verbal warning shall be required in any case where the officer is unable for any reason to reasonably access the property, or to reasonably locate the person causing the sound in violation hereof, or the owner, operator, tenant or occupant of the property from which the sound constituting a violation emanates. If an officer is unable to reasonably identify the person causing the sound in violation of this article, but is able to determine the property from which said sound emanates, there is a rebuttable presumption that the sound was caused by the owner of the property, who shall be issued a citation for violation of this article.

(b) The first violation of this article by any person shall be a class III violation in accordance with the then-existing Administrative Order pertaining to local ordinance violations in Pasco County, Florida. For each subsequent violation by the same person within the preceding twelve (12) month period, the fine class shall increase by one level. For purposes of this article, any sound that is measured in violation of this article two times at least 15 minutes apart, even if abated in between measurements, shall be deemed a separate violation.

(c) Nothing contained herein shall prohibit enforcement of this article by other means, including action in a court of competent jurisdiction for injunctive or other equitable relief. A violation of this article shall be deemed a public nuisance, subject to abatement under law. In any legal action initiated by the City to enforce this article, the court shall award the City its reasonable attorneys' fees and court costs incurred in said action.

Section 3. Conflict with Other Ordinances and Codes. All ordinances or parts of ordinances of the City of New Port Richey, Florida, in conflict with the provisions of this ordinance, are hereby repealed to the extent of such conflict.

Section 4. Severability. If any provision or portion of this ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this ordinance shall remain in full force and effect.

Section 5. Effective Date. This ordinance shall take effect immediately upon its adoption as provided by law.

The foregoing Ordinance was duly 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 read 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: _____

By: _____

Judy Meyers, City Clerk

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:

Timothy P. Driscoll, City Attorney