

ORDINANCE NO. 09- 2015

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COCOA, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 2, ARTICLE XI, RELATED TO SOUND AMPLIFICATION AT SPECIAL EVENTS; AMENDING CHAPTER 13.5, ARTICLE II, RELATED TO NOISE DISTURBANCES; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, INCORPORATION INTO THE CODE, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City is granted the authority, under Section 2(b), Article VIII, of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the Cocoa Code of Ordinances currently regulates excessive sound which constitutes a serious hazard to the public health and welfare, safety, and the quality of life of the citizens of the City of Code; and

WHEREAS, the citizens of the City of Cocoa should continue to have a right to and should be ensured an environment free from excessive sound and vibration that may jeopardize their health or welfare or safety or degrade the quality of life; and

WHEREAS, the regulation of sound and noise in public areas is an important function of government. *See Davis v. State*, 710 So. 2d 635 (Fla. 5th DCA 1998); and

WHEREAS, protecting the public from excessively loud noise is a compelling state interest. *See Grayned v. City of Rockford*, 408 U.S. 104 (1972) (“If overamplified loudspeakers assault the citizenry, government may turn them down.” (citing *Kovacs v. Cooper*, 336 U.S. 77 (1949), and *Saia v. People of State of New York*, 334 U.S. 558 (1948))); and

WHEREAS, a municipality has constitutional and statutory power to prescribe incarceration as a penalty for violation of a municipal ordinance. *See Thomas v. State*, 583 So. 2d 336 (Fla. 1991); and

WHEREAS, the City Council finds that the limitations on noise within the City of Cocoa, as provided herein, are unrelated to viewpoint and the content of any message, and will further the City’s legitimate and substantial government interest in minimizing noise pollution; and

WHEREAS, the City Council finds that the goals of this Ordinance are unrelated to the expression of free expression; and

WHEREAS, the City Council of the City of Cocoa, Florida, hereby finds this ordinance to be in the best interests of the public health, safety, and welfare of the citizens of Cocoa.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF COCOA, BREVARD COUNTY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are hereby fully incorporated herein by this reference as legislative findings and the intent and purpose of the City Council of the City of Cocoa.

Section 2. Code Amendment. Chapter 2, Administration, and Chapter 13.5, Nuisances, of the Code of Ordinances, City of Cocoa, Florida, are hereby amended as follows (underlined type indicates additions and ~~strikeout~~ type indicates deletions, while asterisks (* * *) indicate a deletion from this Ordinance of text existing in Chapters 2 and 13.5. It is intended that the text in Chapters 2 and 13.5 denoted by the asterisks and set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance):

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CHAPTER 2 - ADMINISTRATION

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ARTICLE XI. SPECIAL EVENTS AND PARADES

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Section 2-402. Special Event.

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(p) Sound amplification. Any special event which utilizes sound amplification systems shall limit the sound level to a maximum of 98 dBA and a maximum of 100 dBC, measured at the special event soundboard in a manner so as to present an accurate representation of the sound. Special events utilizing sound amplification systems are also subject to the following:

(1) Hours of operation of the sound amplification system shall be limited as follows:

(i) Special event sound amplification systems are prohibited after 10:00 pm from Sunday through Thursday, and after 10:30 pm on Friday and Saturday. The city manager shall have the authority, consistent with this article, to grant variances to the hours of operation required by this subsection.

(A) Any person seeking a variance pursuant to this subsection shall file a written request with the city manager. The request shall contain information which

demonstrates that bringing the source of sound for which the variance is sought into compliance with this article would constitute an unreasonable hardship on the requestor, on the community, or on other persons.

(B) In determining whether to grant or deny the request, the city manager shall balance the hardship to the requestor, the community, and other persons of not granting the variance against the adverse impact on the health, safety, and welfare of the persons affected, the adverse impact on property affected, and any other adverse impacts of granting the variance. Requestors of variances and persons contesting variances may be required to submit any information the city manager may reasonably require.

(C) Variances shall be granted by notice to the requestor containing all necessary conditions, including a time limit on the permitted sound amplification. The variance shall not become effective until all conditions are agreed to by the requestor. Noncompliance with any condition of the variance shall terminate it and subject the person holding it to those provisions of this article regulating the source of sound for which the variance was granted.

(D) Any variance granted by the city manager pursuant to this subsection shall be authorized in writing either as a written condition of a special event permit, agreement, or by other written notice.

(2) *City Manager Authority to Reduce Sound Level Limits.* The city manager is authorized to reduce the maximum sound level limits based on past experiences or any relevant factors to ensure compatibility with the surrounding areas and environment. Any such reduction by the city manager shall be authorized in writing either as a written condition of a special event permit, agreement, or by other written notice.

(3) *City Council Variances for City Sponsored Events.* Special events authorized and sponsored by the city at public event locations authorized by the city are not exempt from this subsection. Notwithstanding the foregoing, sound amplification at such events may exceed either the maximum sound level limits or the requirements for hours of operation set forth in this subsection, or both, upon approval of a variance by the city council pursuant to the criteria set forth in this subsection.

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CHAPTER 13.5 NUISANCES

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ARTICLE II. NOISE

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Sec. 13.5-21. – Noise disturbances prohibited.~~Loud and raucous noise prohibited generally.~~

No person shall unreasonably make, continue, or cause to be made or continued, any noise disturbance.

~~It shall be unlawful for any person to willfully make, continue or cause to be made or continued any loud and raucous noise, which term 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 of Cocoa. 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 at a location of not less than fifty (50) feet from the radio, television, stereo, loudspeaker, motor, horn or other noise source.~~

Sec. 13.5-22. - Definitions.

For the purposes of this article, the following words and phrases shall have the meanings ascribed to them, unless the context clearly indicates otherwise:

A-weighted sound level. The sound pressure level, in decibels, as measured on a sound level meter using the A-weighting network. The level so read shall be designated as dBA.

ANSI means the American National Standards Institute.

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C-weighted sound level. The sound pressure level, in decibels, as measured on a sound level meter using the C-weighting network. The level so read shall be designated as dBC.

Commercial Area shall mean those areas zoned and designated for commercial uses on the City's official zoning map (including, but not limited to, P-S, C-R, C-N, C-G, CBD, C-P, C-W, C-C, UMD, PUD (with commercial or mixed uses) and INST) and/or future land use map or areas where commercial uses exist.

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Decibel (dB) means a unit for measuring the magnitude of sound, equal to 20 times the logarithm (base 10) of the ratio between RMS sound pressure and reference pressure (20 micropascals).

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Equivalent Sound Level (L_{eq}) means a sound level descriptor based on the average acoustic intensity over time. L_{eq} is intended as a single number indicator to describe the mean energy or intensity level over a specified period of time during which the sound level fluctuated. The period of time specified in this ordinance is ten minutes. L_{eq} is measured in dB and is expressed according to the weighting network as either A-weighted or C-weighted (L_{eqA} or L_{eqC}).

Industrial Area shall mean those areas zoned and designated for industrial uses on the City's official zoning map (including, but not limited to, M-1, M2) and/or future land use map or areas where industrial uses exist.

~~Loud and raucous noise.~~ 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.

~~Motor vehicle.~~ Any vehicle which is self-propelled and every vehicle which is propelled by electric power from overhead trolley wires, but not operated on rails. This term also includes motor cycles and motor-driven vehicles.

Motor Vehicle means any vehicle which is defined as a "motor vehicle" by Chapter 316, Florida Statutes.

Noise means any unwanted sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

Noise disturbance means any sound which:

- (1) Endangers or injures the safety or health of humans or animals; or
- (2) Annoys or disturbs a reasonable person of normal sensitivities; or
- (3) Endangers or injures personal or real property.

For purposes of this definition, any sound that exceeds the maximum permissible sound levels set forth in section 13.5-26 of this article shall constitute an evidentiary basis for declaring a noise disturbance. It is the intent and purpose of this definition that sounds that either meet the aforesaid criteria or exceed the sound levels in section 13.5-26 of this article or both shall constitute a violation of this article.

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Residential Area shall mean those areas zoned and designated for residential uses on the City's official zoning map (including, but not limited to RE, RA, RR-1, RR-2, RU-1-7, RU-1-7-a, RU-1-10, RU-2-10, RU-2-15, RU-25, RM-3, RM-4, PUD (with residential uses) and R-P, and/or future land use map or areas where residential uses exist.

Sound Level means the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, or C as specified in American National Standards Institute specifications for sound level meters (ANSI S1.4 - 1971, or the latest approved revision thereof). If the frequency weighting employed is not indicated, the A-weighting shall apply.

Sound Level Analyzer means an instrument which includes a microphone, amplifier, RMS detector, integrator or time average, output meter, and weighting networks used to measure sound pressure levels.

Sound Pressure means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by sound energy.

Sound Pressure Level means 20 times the logarithm to the base 10 of the ratio of the RMS sound pressure to the reference pressure of 20 micropascals ($20 \times 10^{-6} \text{ N/m}^2$). The sound pressure level is denoted L_p or SPL and is expressed in decibels.

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Sec. 13.5-23. - Enumeration.

The following acts, and the causing thereof, are declared to be noise disturbances in violation of this article public nuisances:

(a) **Electronic Device; Musical Instruments.** Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces, or amplifies sound:

- (1) Between the hours of 10:00 p.m. and 7:00 a.m. the following day in such a manner as to create a noise disturbance across a real property, except for activities open to the public and for which a special event variance has been issued by the City according to the criteria set forth in Section 2-402(p);
- (2) In such a manner as to create a noise disturbance at 25 feet from such device, when operated in or on a motor vehicle on a public right-of-way or public space, or in a boat on public waters;
- (3) In such a manner as to create a noise disturbance to any person other than the operator of the device, when operated by any passenger on a common carrier.

(b) **Loud Speakers.** Using or operating any loudspeaker, public address system, or similar device:

(1) Between the hours of 10:00 p.m. and 7:00 a.m. the following day, such that the sound therefrom creates a noise disturbance across a real property boundary;

(2) Between the hours of 10:00 p.m. and 7:00 a.m. the following day on a public right-of-way or public space.

(c) **Animals; Birds.** Having control and possession of any animal or bird which frequently or for continued duration, howls, barks, meows, squawks, or makes other sounds which create a noise disturbance across a residential real property boundary. (This provision shall not apply to public zoos and public dog parks).

(d) **Construction.** Operating or permitting the operation of any mechanically powered tools or equipment used in construction, drilling, or demolition work between the hours of 10:00 p.m. and 7:00 a.m. the following day. Sound levels created by construction, drilling, or demolition activities shall not cause a noise disturbance at or across a real property boundary, except for bona fide emergency work of or by a variance issued pursuant to this article.

(e) **Vehicle and Boat Repairs.** Repairing, rebuilding, modifying, or testing any motor vehicle, motorcycle, or motorboat in such a manner as to cause a noise disturbance across a residential real property boundary.

(f) **Places of Public Entertainment.** Operating, playing, or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces, or amplifies sound in any place of public entertainment at a sound level greater than the maximum permissible limit measure at the property line for commercially zoned areas, except as authorized by section 2-402(p).

(g) **Explosives.** Using or firing explosives or similar devices which create impulsive sound so as to cause a noise disturbance across a real property boundary or on a public space or right-of-way, without first obtaining a variance pursuant to this article.

(h) **Model Vehicles.** Operating or permitting the operation of powered model vehicles so as to create a noise disturbance across a residential real property boundary or in a public space between the hours of 10:00 p.m. and 7:00 a.m. the following day.

(i) **Motorboats.** Operating or permitting the operation of any motorboat in any lake, river, stream, or other waterway in such a manner as to create a noise disturbance at 50 feet or the nearest shoreline, whichever distance is less.

~~(1) **Engine exhaust.** The discharge into the open air of the exhaust of any steam engine or internal combustion engine, whether stationary or moving, except through a muffler or other device which will effectively prevent loud and raucous noises therefrom.~~

~~(2) **Operation of equipment at night, on Sundays.** The operation between the hours of 8:00 p.m. and 7:00 a.m., on any day or at any time on Sunday, or any pile driver, steam~~

~~shovel, pneumatic hammer, derrick, dredge, steam or electric hoist or other appliance, machine or equipment, the use of which is attended by loud and raucous noise.~~

- ~~(3) *Blowers.* The operation of any blower or power fan or any internal combustion engine, the operation of which causes loud and raucous noise, unless the noise from such blower or fan is muffled or such engine is equipped with a muffler device sufficient to prevent loud and raucous noise.~~
- ~~(4) *Horns, signaling device, etc.* The sounding of any horn, whistle or other audible signaling device so as to create a loud and raucous noise.~~
- ~~(5) *Radios, televisions, amplifiers, phonographs, etc.* The using, operating or permitting to be played, used or operated any radio, stereo, television, amplifier, musical instrument, phonograph or other device for the producing or reproducing of sound in such manner as to cause loud and raucous noise by any person present and in control of such device or by any person present and in control of premises wherein such device is located.~~
- ~~(6) *Sound trucks.* In accordance with section 20-39 of the City of Cocoa Code, 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 of Cocoa for advertising purposes or to attract the attention of the public.~~
- ~~(7) *Yelling, (j)Shouting, **yelling, whistling,** etc.* Yelling, shouting, whistling or singing at any time or place in such a manner as to create a noise disturbance so as to create a loud and raucous noise between the hours of 10:00 p.m. and 7:00 a.m. on any day.~~
- ~~(8) *Noisy animals, birds.* The keeping of any animal or bird which habitually causes a loud and raucous noise.~~
- ~~(9) *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 good working order and in constant operation so as to prevent loud and raucous noise.~~
- ~~(10) *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 between the hours of 8:00 p.m. and 7:00 a.m. the following 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 proper building official, 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 division 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 between the hours of 8:00 p.m. and 7:00 a.m., or on Sunday, the building division may grant permission for such work to be done between such hours or within a shorter time period during such hours, upon application being made at the time the permit for the work is issued or during the progress of the work. Provided, however, that the making of minor repairs and alterations to a building by the owner or occupant thereof between the hours of 9:00 a.m. and 6:00 p.m. on Sundays shall not be within the proscription of this subsection.~~

~~(j) **Creation of noise near schools, public buildings, churches, hospitals.** The creation of any loud and raucous noise disturbance heard within any school, public building, church or 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.~~

~~(k) **Noises used to attract attention.** The use of any drum or other instrument or device to create a loud and raucous noise.~~

~~(l) **Dropping or throwing objects.** The unnecessary dropping or throwing of objects on or against the ground, pavement, concrete walk or other object so as to create loud or unnecessary clanging, grating, rattling or other noise.~~

~~(m) **Steam whistles.** The blowing of any train whistle or steam 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 city officials.~~

~~(n) **Loading and unloading; opening boxes.** Creation of a loud and raucous noise in connection with loading or unloading any vehicle, or opening and destruction of bales, crates and containers.~~

~~(16) **Motor vehicles.** Loud and raucous noise created by any vehicle which is self-propelled and every vehicle which is propelled by electric power from overhead trolley wires, but not operated on rails, this include motorcycles or motor driven vehicles.~~

~~(17) **Tire screeching.** The intentional repeated creation of loud and raucous noise through the acceleration, turning or stopping of any motor vehicle.~~

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Sec. 13.5-25. - Exceptions.

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

- (1) Cries for emergency assistance and warning calls. The emission of sound for the purpose of alerting persons to the existence of any emergency, or the emission of sound in the performance of emergency work.

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- (3) Parades, fireworks displays and other special events for which a permit has been obtained from the city, within such hours and at such decibel levels as may be imposed as a condition for the issuance of the permit.

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- (9) Special event sound amplification systems, which shall be regulated pursuant to section 2-402(p).

Sec. 13.5-26. Maximum Permissible Sound Levels by Receiving Land Use.

No person shall operate or cause to be operated on private property any source of sound in such a manner as to create a sound level which exceeds the limits set forth for the receiving land use category in Table 1 when measured at or within the property boundary of the receiving land use. These maximum permissible sound levels are ten minute L_{eq} , dBA and dBC values measured in accordance with the guidance provided in this article.

Table 1.

<u>Land Use Category</u>	<u>Time</u>	<u>Maximum Permissible Sound Level L_{eq} 10 min dBA</u>	<u>Maximum Permissible Sound Level L_{eq} 10 min dBC</u>
A (Residential Area)	7:00 a.m. to 7:00 p.m.	60	70
	7:00 p.m. to 7:00 a.m.	55	65
B (Commercial Area)	7:00 a.m. to 7:00 p.m.	65	75
	7:00 p.m. to 7:00 a.m.	60	70
C (Industrial Area)	At all times	65	75

Sec. 13.5-27. Standardized Measurements Required.

Measurements shall conform to standardized practices and must be completely delineated in any submitted noise report. Measurements shall be taken so as to present an accurate representation of the sound.

Sec. 13.5-28. Required Measurement Procedures.

The following conditions must always be met when applicable testing is underway:

(a) The measurement of sound shall be made with a sound level analyzer and shall conform to ANSI 1.4-1983. Either Type 1 or Type 2 sound analyzers are permitted per ANSI S1.4-1971. If octave band testing is required, octave band or one-third octave band analyzers filter sets shall conform to ANSI 1.11-1976.

(b) Calibration of all instruments, components, and attachments shall conform to the latest ANSI Standards.

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Sec. 13.5-2926. Penalties.

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Sec. 13.5-3027. Citizen Suits.

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Sec. 13.5-31 – Administrative variances for time to comply.

(a) The owner of any commercial source of sound not in compliance with this article may submit a written request to the city manager for a variance for time to comply with this article. The city manager shall have the authority, consistent with this section, to grant a variance, not to exceed one hundred eighty (180) days from date of the written request and approval thereof.

(b) The written request shall contain information which demonstrates that bringing the source of sound for which the variance is sought into compliance with this article prior to the date requested would constitute an unreasonable hardship on the requestor, on the community, or on other persons.

(c) In determining whether to grant or deny the request, the city manager shall balance the hardship of the requestor, the community, and other interested persons of not granting the variance for time to comply, against the adverse impact on health, safety, and welfare of persons affected, the adverse impact on property affected, and any other adverse impacts of granting the variance. Requestors of variances for time to comply and persons contesting variances may be required to submit any information the city manager may reasonably require.

(d) Variances for time to comply shall be granted to the requestor containing all necessary conditions, including a schedule for achieving compliance. The variance for time to comply shall not become effective until all conditions are agreed to by the requestor. Noncompliance with any condition of the variance shall terminate the variance and

subject the person holding it to those provisions of this article for which the variance was granted.

- (e) Requests for extension of time limits specified in variances for time to comply or for modification of other substantial conditions shall be treated like requests for initial variances under subsection (b), except that the city manager must find that the need for the extension or modification clearly outweighs any adverse impacts of granting the extension or modification.

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Sec. 13.5-32-28-13.5-50. Reserved.

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Section 3. Repeal of Prior Inconsistent Ordinances and Resolutions. All prior inconsistent ordinances and resolutions adopted by the City Council, or parts of prior ordinances and resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

Section 4. Incorporation Into Code. This Ordinance shall be incorporated into the Cocoa, City Code and any section or paragraph, number or letter, and any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical, and like errors may be corrected and additions, alterations, and omissions, not affecting the construction or meaning of this ordinance and the City Code may be freely made.

Section 5. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 6. Effective Date. This Ordinance shall become effective immediately upon adoption by the City Council of the City of Cocoa, Florida.

ADOPTED by the City Council of the City of Cocoa, Florida, in a regular meeting assembled on the 24th day of March, 2015.

Henry U. Parrish, III, Mayor

ATTEST:

Joan Clark, City Clerk

(1st reading 3/10/15)
(2nd reading 3/24/15)