



TOWN OF PALM BEACH

Town Manager's Office

TENTATIVE -
SUBJECT TO
REVISION

ORDINANCES, RULES AND STANDARDS COMMITTEE MEETING

AGENDA

VIA ZOOM ONLY

<https://us06web.zoom.us/j/83486017400>

Thursday, February 3, 2022
2:00 PM

I. CALL TO ORDER AND ROLL CALL

Julie Araskog, Committee Chair
Ted Cooney, Committee Member

II. PLEDGE OF ALLEGIANCE

III. APPROVAL OF AGENDA

IV. COMMUNICATIONS FROM CITIZENS

V. REGULAR AGENDA

A. Old Business

1. Further Review of Chapter 42 of the Town Code, Article V – Noise
Jay Boodheshwar, Deputy Town Manager
2. Review of Draft Ordinance to Limit Vegetation Height Adjacent to
Neighboring Structures
Wayne Bergman, Director of Planning, Zoning and Building
3. Update on Actions to Improve Truck Traffic Logistics
Jay Boodheshwar, Deputy Town Manager

B. New Business

1. None

VI. ANY OTHER MATTERS

VII. ADJOURNMENT

PLEASE TAKE NOTE:

The progress of this meeting may be monitored by visiting the Town's website (www.townofpalmbeach.com) and clicking on "Meeting Audio" in the left column. If you have questions regarding that feature, please contact the Office of Information Technology (561) 227-6315. The audio recording of the meeting will appear within 24 hours after the conclusion of the meeting.

Disabled persons who need an accommodation in order to participate in the meeting are requested to contact the Town Manager's Office at 838-5410 or through the Florida Relay Service by dialing 1-800-955-8770 for voice callers or 1-800-955-8771 for TDD callers, at least two (2) working days before this meeting.

TOWN OF PALM BEACH

Information for ORS Committee Meeting on: February 3, 2022

To: Ordinances, Rules & Standards Committee

From: Jay Boodheshwar, Deputy Town Manager

Re: Further Review of Chapter 42 of the Town Code, Article V - Noise

Date: December 29, 2021

STAFF RECOMMENDATION

Staff recommends the Ordinances, Rules & Standards Committee (ORS) review the information provided below, pertaining to noise sections of the Town Code, and provide direction to staff.

GENERAL INFORMATION

After a lengthy review by ORS, the committee recommended amendments to sections 42-197 and 43-230 of the Town Code via Ordinance No. 29-2021, which was approved on first reading at Town Council at the December 14, 2021, meeting. The second and final reading of Ordinance No. 29-2021 is scheduled for the January 11, 2022, Town Council meeting. Said amendments are included and highlighted in blue in the attached, which also includes the following sections of Chapter 42 – Article V. Noise:

- 42-196. Prohibited noise
- 42-226. Use of meter authorized
- 42-227. Geographic sections
- 42-228. Non-vehicular noise
- 42-229. Vehicular noise

The following sections of Chapter 42, Article V. Entertainment Establishments have also been attached, as they may be relevant to the ongoing ORS discussion regarding noise.

- 22-271. Applicability
- 22-272. General operation as nuisance
- 22-273. Closing hours, patrons to vacate
- 22-274. Establishments excepted from closing time
- 22-275. Open air music and singing in commercial district

Staff will be prepared to review each section and discuss the practical application of the various sections of Chapter 42, Article V, but to narrow the discussion we have taken the liberty of highlighting the sections we believe ORS would like to examine.

At the request of ORS, staff has also completed some research into decibel levels in other jurisdictions. As outlined in Ben Alma's attached memo, other communities have varying allowable levels at different times within a 24 hour period, similar to Palm Beach. Palm Beach's current allowable decibel levels vary not only by time of day (day and night) but also by geographical areas. Other communities differentiate by zoning districts, which may be something to consider.

Lastly, the attached memo from Town Attorney, Skip Randolph, is a response to Police Chief Nick Caristo's request for guidance in the application of sections 42-196 and 42-197 of the Town Code, as well as Florida State Statute 316.3045. Skip's opinion should be reviewed in preparation for discussion regarding these two sections of the code.

Attachments

cc: Kirk Blouin, Town Manager
Carolyn Stone, Assistant Town Manager
Department Directors
Ben Alma, Support Services Manager
John Randolph, Town Attorney

PART II - CODE OF ORDINANCES
Chapter 42 - ENVIRONMENT
ARTICLE V. NOISE

ARTICLE V. NOISE¹

DIVISION 1. GENERALLY

Sec. 42-196. Prohibited noise.

It shall be unlawful for any person to make, continue, or cause to be made or continued:

- (1) Any loud or raucous noise;
- (2) Any noise that tends to annoy the community or injure the health of the citizens in general; or
- (3) Any noise that annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of any considerable number of persons. A considerable number of persons, for this section, shall mean three or more unrelated persons in separate households.

(Code 1982, § 12-48; Ord. No. 23-09, § 1, 1-12-10)

Sec. 42-197. Specific acts prohibited.

The following acts shall be unlawful whether or not such acts constitute a violation of section 42-196:

- (1) *Keeping of animals.* The keeping of any animal or bird that causes loud and raucous noise, or frequent noise audible within any receiving dwelling, hotel or other type of residence.
- (2) *Playing of radio, television, phonograph, similar device.* The playing of any radio, television, phonograph, compact disc player, tape player, musical instrument, or other sound-making device audible within any receiving dwelling, hotel or other type of residence between the hours of 12:00 midnight and ~~7:00~~ 9:00 a.m. or at any such time so that the sound created by such device violates the standards set forth in section 42-196.
- (3) *Loudspeakers, amplifiers for advertising.* The using, operating or permitting the playing, using or operating of any radio or television receiving sets, musical instrument, phonograph, compact disc player, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound cast upon the public

¹Cross reference(s)—Sounding horn unnecessarily, § 118-7Cross reference(s)—.

streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure.

- (4) *Noises near churches, schools.* The creation of any noise on any street or other public way adjacent to any church, school or institution of learning while the same is in session that unreasonably interferes with the workings of such institution.
- (5) *Loading and unloading operations.* The creation at any time of loud and raucous noise in connection with loading or unloading any vehicle, or the opening and destruction of bales, crates or containers.
- (6) *Noises to attract attention.* The use of any drum, pan, pail, bell, horn, trumpet, loudspeaker or other instrument or sound-making device for the purpose of attracting attention to any performance, show, sale, display or merchandise.
- (7) *Yelling, shouting, similar noises.* Yelling, shouting, hooting, whistling or singing on the public streets between the hours of 12:00 midnight and ~~7:00~~ 9:00 a.m., or at any time or place in a manner violating the standards set forth in section 42-196.
- (8) *Blowers.* The operation of any noise-creating blower or power fan, or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise from such blower or fan is muffled and such engine is equipped with a muffler device sufficient to deaden such noise.
- (9) *Operation of car radios.* The operation of radios or other mechanical sound making devices or instruments in vehicles as hereby regulated and controlled by F.S. § 316.3045.
- (10) *Operation of sound making devices in public areas.* The operation of radios or tape players or other mechanical sound making devices or instruments in or upon a public street, highway, building, sidewalk, park, thoroughfare or other public area or located in or upon a public access area, such as a parking lot, etc., if such sound can be heard from more than 50 feet, measured in a straight line from its source.
- (11) *Commercial loading and unloading operations, certain times prohibited for locations in or adjacent to residentially zoned areas.* The commercial loading and unloading of any vehicle, or the opening, destruction and/or disposal of bales, crates, containers, or any other item for businesses located in or adjacent to residentially zoned areas, shall be prohibited between the hours of 8:00 p.m. and 8:00 a.m.
- (12) *Gasoline powered leaf blowers.*
 - (a) *Definition.* Leaf blowers shall mean any air blowing machine that uses a concentrated stream of air to push, propel or blow dirt, dust, leaves, grass clippings, trimmings, cuttings, refuse or debris.

- (b) The use of gasoline powered leaf blowers is prohibited on any property within the town ~~which is less than one acre in size~~. This prohibition shall be effective as of ~~May 1, 2022~~ October 1, 2017. The current allowance of gasoline powered leaf blowers on properties one acre or more shall be eliminated as of May 1, 2022, when all gasoline powered leaf blowers shall be prohibited on any property within the town.

(Code 1982, § 12-49; Ord. No. 8-00, § 1, 6-13-00; Ord. No. 11-2017, § 1, 4-13-17)

DIVISION 2. MEASURED CRITERIA

Sec. 42-226. Use of meter authorized.

Measurement of noise may be made with a sound level meter using the A scale (dBA) and/or an octave band (frequency) analyzer meeting the standards prescribed by the American Standards Association. Measurement and recordation of any noise that has the possibility of annoying, disturbing, being injurious or endangering the comfort, repose, health, peace or safety of others shall be measured and recorded at the property line of the private property originating the noise or shall be measured and recorded at the property line of the adjacent private property if the noise is originating from any public road, street or property.

(Code 1982, § 12-47(a))

Sec. 42-227. Geographic sections.

The criteria listed in section 42-226 shall be applicable to the following geographical areas of the town:

- (1) *Area 1.* From the northerly corporate limits southerly to Wells Road.
- (2) *Area 2.* From Wells Road southerly to Worth Avenue.
- (3) *Area 3.* From Worth Avenue southerly to Sloan's Curve.
- (4) *Area 4.* From Sloan's Curve southerly to the southerly corporate limits.

(Code 1982, § 12-47(b))

Sec. 42-228. Nonvehicular noise.

In the use of a sound level meter, the following criteria shall be used for determining a violation of the town's ordinances relating to the maximum permissible emissions of noise levels emanating from other than motor vehicles, with the exception of lawn maintenance equipment.

Area (Geographic)	Maximum Level, dBA	
	Day	Night
1	61	55
2	64	58
3	61	55
4	66	60

"Night" as used hereinabove is defined as the hours between 7:00 p.m. and 9:00 a.m.

(Code 1982, § 12-47(c))

Sec. 42-229. Vehicular noise.

In the use of a noise level meter to measure noises emitted by motor vehicles, the criteria to be used for determining a violation of the town's ordinances relating to the maximum permissible emissions of noise levels shall be as prescribed by F.S. § 316.293.

(Code 1982, § 12-47(d))

Cross reference(s)—Traffic and vehicles, ch. 118Cross reference(s)—.

Sec. 42-230. Lawn maintenance.

- (a) Lawn maintenance in the town shall be limited to the hours outlined for construction work at section 42-199 and [all gas or electric powered lawn maintenance equipment, including](#) leaf blowers, shall be subject to the same restrictions as heavy equipment as described in said section.

PART II - CODE OF ORDINANCES
Chapter 22 - BUSINESSES
ARTICLE V. - ENTERTAINMENT ESTABLISHMENTS
DIVISION 2. NIGHTCLUBS, DANCE HALLS AND SIMILAR ESTABLISHMENTS

DIVISION 2. NIGHTCLUBS, DANCE HALLS AND SIMILAR ESTABLISHMENTS

Sec. 22-271. Applicability.

This division shall apply to dance halls, dance schools, nightclubs, supper clubs, restaurants, bars, lounges and other similar entertainment activities (collectively, "entertainment establishments" and individually, an "entertainment establishment"), where facilities for dancing are furnished or music is played and which, under chapter 114, article II and the ordinances of the town, are required to have a business tax receipt as a condition precedent to their operation.

(Code 1982, § 12-63; Ord. No. 13-08, § 1, 5-12-08)

Sec. 22-272. General operation as nuisance.

- (a) It shall be unlawful to operate any entertainment establishment in such manner as to annoy, injure or endanger the comfort, repose, health or safety of any considerable number of persons.
- (b) To so operate any entertainment establishment in a manner that annoys, injures or endangers the comfort, repose, health or safety of any considerable number of persons is declared a public nuisance.

(Code 1982, § 12-64; Ord. No. 13-08, § 2, 5-12-08)

Sec. 22-273. Closing hours, patrons to vacate.

- (a) All entertainment establishments where facilities for dancing are furnished or music is played, located on property lying adjacent to or within 50 feet of property classified under the zoning ordinances of the town as a residence district shall close such place of business at 12:00 midnight, and all patrons of such entertainment establishments shall quietly vacate the same by such closing hour.
- (b) All entertainment establishments shall close such business by 3:00 a.m. and all patrons of such entertainment establishments shall quietly vacate the same by such closing hour.

(Code 1982, § 12-65; Ord. No. 13-08, § 3, 5-12-08)

Sec. 22-274. Establishments excepted from closing time.

- (a) The provisions of section 22-273 shall not apply to any entertainment establishment where facilities for dancing are furnished or music played if such entertainment activities are located exclusively within the confines of a building in such manner that such entertainment activities or noise emanating therefrom will not be objectionable beyond the confines of such building.
- (b) The provisions of section 22-273 shall not apply to any entertainment establishment that has obtained the written consent of the owners or occupants of improved property classified as being in a residential districts lying within 100 feet of such entertainment establishment, or to the operation of such entertainment establishment beyond the allowed hours when such consent has been received.
- (c) The provisions of section 22-273 shall not be deemed to prohibit the operation of any entertainment establishment regulated in this division within the confines of a building in such manner that such entertainment activities or noise emanating therefrom will not be objectionable beyond the confines of such building, regardless of the fact that such entertainment establishment may have, in addition to the facilities for such entertainment exclusively within the confines of such building as herein provided, provisions for open air dancing, provided such open air dancing, or music played or entertainment furnished beyond the confines of such building, shall not extend beyond 12:00 midnight without the written consent of the property owners as specified in subsection (b).

(Code 1982, § 12-66; Ord. No. 13-08, § 4, 5-12-08)

Sec. 22-275. Open air music and singing in commercial district.

No entertainment establishment as defined in section 22-273 surrounded by property classified under the zoning ordinance as commercial districts shall play or cause to be played any music in the open air after 1:00 a.m., nor shall any singing be allowed by such entertainment establishment except within the confines of a building as defined in subsection 22-274(a) after such hour.

(Code 1982, § 12-67; Ord. No. 13-08, § 5, 5-12-08)



TOWN OF PALM BEACH
POLICE DEPARTMENT

A NATIONAL AND STATE ACCREDITED LAW ENFORCEMENT AGENCY



Date: December 27, 2021

To: Jay Boodheshwar, Deputy Town Manager

From: Benjamin Alma, Support Services Manager

Subject: Chapter 42, Section 42-228 of the Town of Palm Beach Code of Ordinances, Noise.

Information regarding noise level ordinances from around the State

The State of Florida has no official state law regarding noise violations. Historically, there was such a law, but the Florida Supreme Court struck it down as unconstitutional in 2012 because it was deemed an unreasonable restriction on the freedom of expression. Since that year, local jurisdictions have enforced ordinances regarding loud noises. See attached article.

Chapter 42, Section 42-228 of the Town of Palm Beach Code of Ordinances currently does not allow non-vehicular noise to exceed the maximum decibel levels for any geographical area. The noise level is a maximum of 64 dBA for day and 58 dBA for night (between 7:00 p.m. and 9:00 a.m.) for your geographic area. Chapter 22, Section 22-273 does not allow entertainment establishments located on properties lying adjacent to or within 50 feet of residential zoning districts to remain in operation past the hour of 12:00 midnight.”

Upon researching how other municipalities, such as;

Jupiter has Residential, Mixed-use, Mixed-use without Residential, Commercial, and Industrial distinctions.

Sec. 13-144. - Exterior sound standards.		
(a) The following sound standards, as measured at a three-minute equivalent sound level (Leq), shall apply to all property with a designated sound zone:		
Table 1. Allowable Exterior Sound Levels per Sound Zone (Measured at a Three-Minute Leq)		
Zone	Daytime Leq (7:00 a.m. to 10:00 p.m.)	Nighttime Leq (10:00 p.m. to 7:00 a.m.)
Residential sound zone	55 dBA	45 dBA
Mixed use sound zone	60 dBA	50 dBA
Commercial sound zone	65 dBA	55 dBA
Industrial sound zone	70 dBA	60 dBA

Naples, primarily identifies noise from 10pm to 7am.

ES / Sec. 22-37. - Noise.

SHOW CHANGES

Residential Site or Unit*		Non-Residential Site or Unit*		Manufacturing, Industrial, or Agricultural Site or Unit*
Day 7 a.m.— 10 p.m.	Night 10 p.m.— 7 a.m.	Day 7 a.m.— 10 p.m.	Night 10 p.m.— 7 a.m.	
69	64	74	69	79
69	64	74	69	79
66	61	71	66	76
62	57	67	62	72
58	53	63	58	68
53	48	58	53	63
49	44	54	49	59
46	41	51	46	56
42	37	47	42	52
60	55	65	60	70

receiving site.

City of Hollywood, enacted their new ordinance May 2021, following the guidelines of, ANSI, The American National Standards Institute

“ESTABLISHMENT OF QUIET HOURS. On residential property between the hours of 10:00 p.m. and 7:00 a.m., no person shall make, cause, allow, or permit the operation of any continuous source of sound in such a manner as to create, when measured at or beyond the real property line of the property from which the sound emanates, a sound level that exceeds 55 dBA or 55 dBC. ADDITIONAL SOUND LIMITATION FOR PUBLIC PROPERTY. No person shall on any public street or sidewalk, park, beach or other public property, or in any motor vehicle located on any public street or property, use, operate or play any radio, phonograph, stereo set, tape or CD player, television, sound amplifier, or other audio device which produces or reproduces sound, musical instrument, at a level which interferes with a person’s peaceful enjoyment or the peace and tranquility of the surrounding area at a distance more than 30 feet from the sound source.”

Santa Rosa County, FL, enacted this in June of 2021,
<https://weartv.com/news/local/santa-rosa-county-commissioners-approve-new-noise-ordinance>

Type of Receiving Property	7:00 a.m. to 9:00 p.m.	9:01 p.m. to 6:59 a.m.
Residential Property	70 dB(A)	60 dB(A)
Non-Industrial, Non-Residential Property	80 dB(A)	75 dB(A)
Industrial Property	85 dB(A)	80 dB(A)

Seminole County, FL, enacted May of 2020. They hired Lisa Schott, President and Principal Acoustical Consultant, to assist them,
<https://www.orlandosentinel.com/news/seminole-county/os-ne-seminole-county-noise-ordinance-20200512-ivraabli3jaxriowzj3jfi6gjm-story.html>

Type of Receptor Premises	Time of Day or Night*	Sound Level Limit	
		dB(A)	dB(C)
Residential	7:00 a.m. to 11:00 p.m.	60	65
	11:00 p.m. to 7:00 a.m.	<u>55</u>	60
Commercial	7:00 a.m. to 11:00 p.m.	65	75
	11:00 p.m. to 7:00 a.m.	60	70
Industrial, Manufacturing, and Public Use	All times	75	<u>85</u>

Florida Supreme Court rejects state noise law as unconstitutional

By Lloyd Dunkelberger, Herald-Tribune / Thursday, December 13, 2012

By **LLOYD DUNKELBERGER** and **JESSIE VAN BERKEL**

TALLAHASSEE

Florida's law telling drivers who blast their car stereos to turn down the volume unreasonably restricts free speech rights, the Florida Supreme Court ruled Thursday.

The decision invalidating the noise law will reverberate throughout the state in communities like Sarasota, which have modeled local ordinances and restrictions based on the state law.

Sarasota went even further, using its ordinance to fine drivers and impound their cars. But the noise restriction has not been enforced since 2010, when the American Civil Liberties Union and the city reached an agreement on a legal challenge.

It marked the second time this week that the courts have shot down a regulation to control the quality of life in Sarasota.

On Tuesday, a county judge ruled that the city must stop enforcing its ordinance banning smoking in public parks.

In Thursday's ruling, which was based on two Pinellas County cases, the state's highest court upheld an opinion from the 2nd District Court of Appeal nullifying the 2005 state law, which allowed police officers to pull over motorists if their sound systems were "plainly audible" from 25 feet away.

Justice Jorge Labarga wrote in the majority opinion that "the statute is invalid because it is an unreasonable restriction on the freedom of expression."

The justices found the law "overbroad, but not unconstitutionally vague."

One of the faults of the law was that it did not apply "equally to music, political speech and advertising," Labarga wrote. The business and political sound systems were exempted from the law.

"For instance, business and political vehicles may amplify commercial or political speech at any volume, whereas an individual traversing the highways for pleasure would be issued a citation for listening to any type of sound, whether it is religious advocacy or music, too loudly," he wrote.

The state, which contended the law was aimed at improving highway safety, argued that the noise restriction on private vehicles was necessary since those vehicles were more "ubiquitous" than commercial or political vehicles.

But Labarga said that restriction went too far.

In 2008, Sarasota city commissioners passed an ordinance allowing officers to not only ticket someone if they could hear their music from 25 feet away, but also impound their car — leaving violators with a hefty fine and making Sarasota the most expensive Florida city to get caught cranking up the jams.

Sarasota Police Capt. Paul Sutton said car stereo noise has remained a constant concern at neighborhood meetings while the case has been under appeal, particularly in North Sarasota, Sutton said.

Police hear from people who awake at 2 a.m. to music that so loud it sounds like it's coming from inside their house, Sutton said.

"That's a concern that affects the quality of life," he said.

Nearly every weekend, Mary Mack's windows rattle and her television is drowned out by the bass sound from cars passing her Amaryllis Park home, a block from Orange Avenue.

"I have a right to have peace in my neighborhood," said Mack, who was disappointed when she learned two years ago that police could not enforce the noise ordinance. She said she has noticed more loud music since then.

"I don't understand why disturbing someone else's peace is not against the law," she said.

The Supreme Court justices rejected the argument from Richard L. Catalano, a Pinellas County corporate lawyer who was pulled over for loudly playing a Justin Timberlake song on his car stereo, that the “plainly audible” standard was unconstitutionally vague.

The justices also decided not to use the decision to invalidate the provision that gave special protection to commercial and political messages, while leaving the remainder of the law standing.

Labarga said removing that provision “would expand the statute’s reach beyond what the Legislature contemplated.”

“Accordingly, in striving to show great deference to the Legislature, this court will not legislate and sever provisions that would effectively expand the scope of the statute’s intended breadth,” he wrote.

The Supreme Court’s ruling was encouraging, Sarasota City Attorney Robert Fournier said, because it leaves room for revision of the law. He said he hopes the Legislature will use it to find a way to protect the public from excessively loud noise.

In an email this week to a resident who is concerned about vehicles blasting music at 4 a.m. in Newtown, Fournier said the city is looking into other laws that could be used to control the problem.

The ACLU, which filed a brief in support of Catalano’s challenge, praised the Supreme Court decision. Andrea Mogensen, the Sarasota lawyer who argued the case for the ACLU of Florida, said the decision was a strong affirmation of the First Amendment, upholding the doctrine that free speech takes precedence over nuisance and annoyance laws that could be subjectively enforced.

The most critical part was the court’s rejection of different speech standards for individuals versus commercial or political interests, she said.

“The very irrational part was it had an exception for commercial speech, which is every bit as irritating in volume as any other kind,” Mogensen said. “It left a lot of room for selective enforcement.”

The ruling was essentially unanimous, although three justices — Charles Canady, Ricky Poston and Peggy Quince — concurred in the result, without offering opinions on why they may have differed with the reasoning of the decision.

[Here](#) is a link to the court’s opinion.

RELATED

Florida Supreme Court to weigh state’s noise law



LLOYD DUNKELBERGER
Lloyd Dunkelberger is the Htpolitics.com Capital Bureau Chief. He can be reached by email or call 850 556-3542. ["More Dunkelberger"](#) Make sure to "Like" HT Politics on Facebook for all your breaking political news.

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Memo

To: Skip Randolph
From: Brett Lashley
Date: December 29, 2021
Subject: Noise Statute and Ordinances

Issue

Can the Town prevent the playing of amplified sounds played through automobiles radios and loudspeakers under T.O. § 42-196, T.O. § 42-197, or Florida Statute § 316.3045?

Brief Answer

Fla. Stat. § 316.3045- This statute was held unconstitutional by the FL Supreme Court in 2012.

T.O. § 42-196- This section has been held to be unconstitutionally vague.

T.O. § 42-197- This section may be enforceable to prevent amplified sounds made on public property that can be heard from over 50 feet away.

Florida Statute § 316.3045

Florida Statute § 316.3045 was held unconstitutional by the Florida Supreme Court in *State v. Catalano*, 104 So. 3d 1069, 1072 (Fla. 2012). In *Catalano*, the Court held that Fla. Stat. § 316.3045 is unconstitutional because it is an unreasonable restriction on the freedom of expression. Specifically, the Court determined that the statute is not unconstitutionally vague, but is unconstitutionally overbroad. *Id.* at 1072. The overbreadth doctrine applies when legislation criminalizes constitutionally protected activities along with unprotected activities, by sweeping too broadly and infringing upon fundamental rights. *Id.* at 1077. In the context of the First Amendment, “[t]he overbreadth doctrine prohibits the Government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the process.” *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 255, 122 S. Ct. 1389, 152 L.Ed.2d 403 (2002). Accordingly, the first step in an overbreadth analysis is to determine whether the statute restricts First Amendment rights, and whether the restrictions are substantial. *Catalano*, 104 So. 3d at 1078.

“[T]he right to play music, including amplified music, in public fora is protected under the First Amendment.” *Id.*¹; see *Ward v. Rock Against Racism*, 491 U.S. 781, 788–90, 109 S.Ct.

¹ The United States Supreme Court recognized in *Saia v. New York*, 334 U.S. 558, 68 S.Ct. 1148, 92 L.Ed. 1574 (1948), that the use of sound amplification equipment within reasonable limits is an aspect of free speech protected by the First Amendment. Furthermore, the mere existence of an alternative means of expression, such as unamplified speech, will not by itself justify a restraint on the particular means that

2746, 105 L.Ed.2d 661 (1989) (noting that regulation of amplified music in public park was protected by the First Amendment); *Saia v. New York*, 334 U.S. 558, 562, 68 S.Ct. 1148, 92 L.Ed. 1574 (1948) (“The police need not be given the power to deny a man the use of his radio in order to protect a neighbor against sleepless nights.”). This right, nevertheless, is subject to reasonable limitations on the time, place, and manner of the protected speech. Limitations are reasonable if they are “justified without reference to the content of the regulated speech, ... narrowly tailored to serve a significant governmental interest, and ... leave open ample alternative channels for communication of the information.” *Ward*, 491 U.S. at 791, 109 S.Ct. 2746. If the time, place, and manner of the limitations are content based, a strict standard of scrutiny is applied.

Subsection (3) of § 316.3045 carves out an exception for “motor vehicles used for business or political purposes, which in the normal course of conducting such business use [sound-making] devices.” This provision makes this statute a ban on the content of the speech, not just a blanket ban on any noise emanating from a vehicle. This subsection treats commercial and political speech more favorably than noncommercial speech and thus, the statute would have to pass strict scrutiny. *Catalano*, 104 So. 3d at 1078.

The statute cannot pass strict scrutiny because traffic safety, which the State argues is the overarching purpose of the statute, is generally not a compelling state interest. *Id.* at 1079. Even assuming it was a compelling state interest, the State failed to show how the statute advances that interest by allowing commercial and political speech to play noise beyond 25 feet, but not allowing noncommercial speech to be heard at the same distance. *Id.* at 1080. As such, the Court found the statute to be unconstitutional.

The Court next determined that subsection (3) could not be severed in order to uphold the rest of the statute. The portion of a statute that is declared unconstitutional will be severed if: “(1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other, and (4) an act complete in itself remains after the invalid provisions are stricken.” *Lawnwood Med. Ctr., Inc. v. Seeger*, 990 So.2d 503, 518 (Fla.2008) (quoting *Cramp v. Bd. of Pub. Instruction*, 137 So.2d 828, 830 (Fla.1962)). Thus, as currently written, the entire statute is unconstitutional.

For the foregoing reasons, the Town could not prevent the playing of amplified sounds that can be heard over 25 feet away under Fla. Stat. § 316.3045. Further, if this statute was constitutional, many violators – the original question mentioned many Trump supporters – may claim that they are displaying political speech, which under the statute would not be subject to the 25 foot limitation.

T.O. § 42-196

Town Ordinance § 42-196 provides:

It shall be unlawful for any person to make, continue, or cause to be made or continued:

the speaker finds more effective. *Id.*

- (1) Any loud or raucous noise;
- (2) Any noise that tends to annoy the community or injure the health of the citizens in general; or
- (3) Any noise that annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of any considerable number of persons. A considerable number of persons, for this section, shall mean three or more unrelated persons in separate households.

The First Amendment's protections of freedom of speech apply to municipal ordinances. *Coal. of Immokalee Workers, Inc. v. Town of Palm Beach, Florida*, 16-CV-80284, 2016 WL 8739993, at *3 (S.D. Fla. Mar. 11, 2016); see *Lovell v. Griffin*, 303 U.S. 444 (1983) (“[M]unicipal ordinances adopted under state authority constitute state action and are within the prohibition of the [First] [A]mendment.”). In *Coal. Of Immokalee Worker*, an activist group seeking to protest in Palm Beach challenged T.O §42-196 as a violation against freedom of speech because there was no set standard to judge whether the noise level was unlawful. *Id.* at 8. The Town responded that §42-196 needed to be read in conjunction with §42-227-§42-228 (defined as the “Decibel Ordinances”). The Decibel Ordinances made it unlawful for noises to exceed 64 decibels, which was determined to be about as loud as the “average male conversation.” *Id.* at 9. Despite the court finding that protecting the townspeople by limiting excessive noise was a significant governmental interest and that the ordinance was content neutral, the court found that the ordinance was not narrowly tailored because the 64 decibels allowed would not allow the demonstrators to speak above an average conversation’s volume level. *Id.* at 9-10.

As such, T.O. § 42-196 has been held as unconstitutionally vague. However, T.O. § 42-229 governs vehicular noise and holds that the maximum permissible emissions of noise levels shall be proscribed by Florida Statute § 316.293. Fla. Sta. § 316.293 proscribes the different acceptable decibel level based on the vehicles size, time of day, and the vehicle’s speed. Accordingly, the Town would probably not be able to rely on § 42-196 because it still does not have any set standard for measuring noise, but the Town may be able to use the section in conjunction with Fla. Stat. § 316.293 based on the type of vehicle, time of day, and speed of the vehicle. (That being said, the Town’s best argument would be based on the Ordinance discussed in the next section).

T.O. § 42-197

The Town may be able to prevent the noise under T.O. § 42-197 during certain hours and for amplified sounds on public property that can be heard from more than 50 feet away. Subsection (2) *Playing of radio, television, phonograph, similar device* states the following:

The playing of any radio, television, phonograph, compact disc player, tape player, musical instrument, or other sound-making device audible within any receiving dwelling, hotel or other type of residence between the hours of 12:00 midnight and 7:00 a.m. or at any such time so that the sound created by such device violates the standards set forth in section 42-196.

Accordingly, the Town likely can prevent amplified noise if its within range of dwellings, hotels, or residences between the above-mentioned hours because the Town's residence would likely have a strong argument that loud noises during these hours are impermissible.

The Town may also be able to prevent the noise under subsection (10) *Operation of sound making devices in public areas* which states:

The operation of radios or tapeplayers or other mechanical sound making devices or instruments in or upon a public street, highway, building, sidewalk, park, thoroughfare or other public area or located in or upon a public access area, such as a parking lot, etc., if such sound can be heard from more than 50 feet, measured in a straight line from its source.

Although similar to Fla. Stat. § 316.3045, this is different because it prevents all noise being made on public property if it can be heard from a distance of over 50 feet. This is a content neutral ban that will hinge on whether the 50 foot standard is narrowly tailored to achieve the Town's interest in providing peace for its residents. See *Davis v. State*, 710 So. 2d 635 (Fla. 5th DCA 1998) (upholding a noise ordinance that prohibits sounds plainly audible from over 100 feet away); compare *Deegan v. City of Ithaca*, 444 F.3d 135, 139 (2d Cir. 2006) (finding that a 25 foot rule was more restrictive than necessary to achieve the government's interest). Thus, there will be a legitimate argument on both sides as to why a 50 foot standard is narrowly tailored to the Town's interest or is too intrusive to withstand a freedom of speech challenge based on the content neutral ordinance.

The only other relevant subsection of § 42-197 that could be applicable is subsection (9) *Operation of car radios* which states "The operation of radios or other mechanical sound making devices or instruments in vehicles as hereby regulated and controlled by F.S. § 316.3045." However, the reference to Fla. Stat. § 316.3045 effectively makes this provision invalid.

Thus, the Town will probably be able to prevent such noise from occurring if within range of dwelling, hotel, or residence between the hours of 12:00 am and 7:00 am and the Town may be able to prevent all amplified noise from public locations under subsection (10) if the noise is made on public property and can be heard from over 50 feet away.

TOWN OF PALM BEACH

Information for ORS Meeting on: February 3, 2022

To: Ordinances, Rules and Standards Committee

Via: Jay Boodheshwar, Deputy Town Manager

From: Wayne Bergman, Director of Planning, Zoning & Building



Re: Consider the Maximum Landscape Height of Buffers and Separation Distances
Between Landscape Buffers and Neighboring Buildings

Date: November 29, 2021

STAFF RECOMMENDATION

Staff requests that the ORS Committee consider the matter of possible prohibitions on plantings and plant heights that provide for rodent or pest access onto adjacent buildings.

GENERAL INFORMATION

As was evidenced in last year's review and discussion of 131 Seaview Avenue, the planting of new landscaping directly next to neighboring buildings can be problematic. The vegetation, including tall hedges, trees and palms, can be the pathway for rodents (primarily rats) and Iguanas to access roofs and eaves. The idea of a maximum landscape height and a minimum separation distance between newly installed planting and neighboring buildings could be reviewed, along with maintenance standards for the newly planted vegetation.

The matter was initially reviewed by the Town Council and sent to the ORS Committee for study. The matter was considered at your September 2, 2021 and October 5, 2021 ORS meetings. The matter was then briefly discussed at the October 12, 2021 Town Council meeting. The matter was last reviewed at the ORS Committee meeting held on November 8, 2021.

Staff has been approaching this matter with an ordinance to add new code regulations to Chapter 66, Natural Resource Protection, Article IV, Vegetation. However, at the November 8, 2021 ORS Committee meeting, it was requested that staff review existing regulations to see if this matter is already regulated under another Town Code. Staff reviewed Chapter 88, Property Maintenance Code. Sections 88-16 and 88-23 exist today, dealing with rodent and pest control, rodent harborage, and rodent infestation. These two sections do not provide the exact protection that staff and the ORS Committee was looking for, but these two sections could be easily modified to incorporate prohibitions on plantings and plant heights that provide for rodent or pest access onto adjacent buildings.

Staff suggests that language could be added to these sections stating, "Plants and plant heights that provide for rodent or pest access onto neighboring buildings shall be prohibited", or similar language.

If this proposal is acceptable, staff can prepare an ordinance for Town Council consideration.

Also attached is a message from Steve & Martha Greenwald, with proposed ways to limit the distance to 4 feet, address affected neighboring buildings, limiting the regulations to midtown, and further limiting the regulations to neighbor requests. Some of all of these suggestions can be incorporated into a final ordinance.

Attached: Chapter 88, Sections 88-16 & 88-23
Email from Steve & Martha Greenwald, November 29, 2021

Sec. 88-16. - Exterior property areas.

(e)

Rodent harborage. Structures and exterior property shall be kept free from rodent harborage and infestation. Where rodents are found, they shall be promptly exterminated by approved processes that will not be injurious to human health. After pest elimination, proper precautions shall be taken to eliminate rodent harborage and prevent reinfestation.

Sec. 88-23. - Pest elimination.

(a)

Infestation. Structures shall be kept free from insect and rodent infestation. Structures in which insects or rodents are found shall be promptly exterminated by approved processes that will not be injurious to human health. After pest elimination, proper precautions shall be taken to prevent reinfestation.

Wayne Bergman

From: Steven Jeffrey Greenwald, Esq. <3102724@gmail.com>
Sent: Monday, November 29, 2021 8:02 AM
To: Julie Araskog; John (Skip) C. Randolph; Jay Boodheshwar; Wayne Bergman
Subject: Perhaps 4 feet on that "Adjacent Growth" proposed rule

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Hello Jay, Wayne, Julie: Just thinking that perhaps that proposed rule change on adjacent growth could be **4 feet** from soffits or structures *instead of 6 feet* in the wording. Maybe that shorter distance would make the proposed rule more amenable to the full council.

Also a limitation of something like this: *"this rule would be applicable only to a neighbor's structure that is very near the lot line or boundary."* Or some other description of zero lot line structures, such as: *"this rule is only applicable in the midtown area, where some part of a neighbor's adjacent structure is at or near their lot line or boundary."* These are just some examples. The wording can be worked on even better than these 2 samples.

Also, a few words in a proposed rule could be: *"... if an adjacent property owner requests"* may be helpful. Many adjacent owners may not care about a hedge situation. Landscapers and owners would get used to such a simple rule, much like they did for the whitefly rule.

Most neighbors would be reasonable as to their requests under this new rule, and only ask a neighbor for hedge cutting if it was necessary.

But the way things are now, with no town code on this at all, anyone can plant anything anywhere; hedge owners can simply ignore a friendly request even if a situation is bad, spawning boundary issues that take up too much time of police, staff, council, etc. That is why many were interested in this simple rule addition.

Feel free to share this email with anyone, the Rules Committee, Council, staff, Town published Backup, etc.

Kind regards, your neighbors

Steve and Martha Greenwald

Steven Jeffrey Greenwald, Esq.

Email address:

3102724@gmail.com

U.S.A. Telephone & voicemail:

561-310-2724

Mailing address: P.O. Box 3407

Palm Beach, Florida 33480 - U.S.A.

TOWN OF PALM BEACH

Information for ORS Committee Meeting on: February 3, 2022

To: Ordinances, Rules & Standards Committee

From: Jay Boodheshwar, Deputy Town Manager

Re: Update on Actions to Improve Truck Traffic Logistics

Date: January 27, 2022

STAFF RECOMMENDATION

Staff recommends the Ordinances, Rules & Standards Committee (ORS) review the information provided below, regarding actions staff plans to take to mitigate the negative effects of construction-related truck traffic and provide feedback to staff.

GENERAL INFORMATION

At the November 8, 2021, ORS meeting, Town Engineer, Patricia Strayer, provided a brief overview regarding the results of the Truck Traffic Study completed by Kimley-Horn & Associates in October 2020. She explained the different types of data provided in the report, such as truck miles and turning counts done at 13 different locations; six types of trucks that were analyzed for turning radius at 24 different intersections, and the communities researched to learn how restrictions have been implemented. Paul Brazil, Director of Public Works, added that the questions before the ORS Committee are: (1) should there be regulations for trucks, (2) where should those regulations be imposed, and what exactly the regulations should be?

After a lengthy discussion, it was determined that staff would meet to discuss ideas to enhance the permitting process and provide informational resources to mitigate the negative impacts of truck traffic on narrow town roads, which was completed in mid-January. The following are actions we have taken to address truck traffic concerns.

Building permit applicants are currently required to submit a “Construction Staging and Truck Logistics Plan for all major projects to demonstrate how parking will be managed and how the site will be set up and maintained. Said plan also requires a plan indicating the proposed route for truck traffic to best ingress and egress the property, including the bridges and roads to be used. The plan is expected to include the size of larger vehicles, the estimated number of trucks, and a rough schedule for deliveries, foundation work, concrete pours, landscaping installation, etc. To educate permittees about roads they should avoid in developing their truck logistics plan for travel to/from project sites the attached map and list of streets to avoid will be provided upon application.

The recently adopted Ordinance No. 28-2021, now requires property owners and their contractors to implement, install, and maintain a number of things, including a truck logistics and staging plan. Resolution No. 01-2022 was also approved by Town Council, updating the Public Works Right of

Way Manual and its Three Strike program to include the additional requirement outlined in Ordinance No. 28-2021, inclusive of truck logistics and staging. Permittees are now required to sign an affidavit attesting that they have received copies of Ordinance No. 28-2021 and Resolution No. 01-2022, which collectively create the Three Strike” Construction Parking and Construction Site Management Program. See attached.

We believe the above actions will aid in the mitigation of adverse impacts of truck travel on narrower town roads, and the “teeth” of the Three Strike rule will be a motivating factor for compliance with the submitted truck logistics plans.

Attachments

cc: Kirk Blouin, Town Manager
Carolyn Stone, Assistant Town Manager
Department Directors
Ben Alma, Support Services Manager
John Randolph, Town Attorney



Map Location:
E Inlet Dr to Bahama Ln

Map Description:
This map shows truck route limitations on East-West roads in The Town of Palm Beach.



Truck Route Limitations

Public Works GIS

Sheet No.
1 of 4

Date	1/19/2022
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Map Location:
Country Club Rd to Sunset Ave

Map Description:
This map shows truck route limitations on East-West roads in The Town of Palm Beach.



Truck Route Limitations

Public Works GIS

Sheet No.
2 of 4

Date	1/19/2022
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Map Location:
Pendleton Ave to Seaview Ave

Map Description:
This map shows truck route limitations on East-West roads in The Town of Palm Beach.

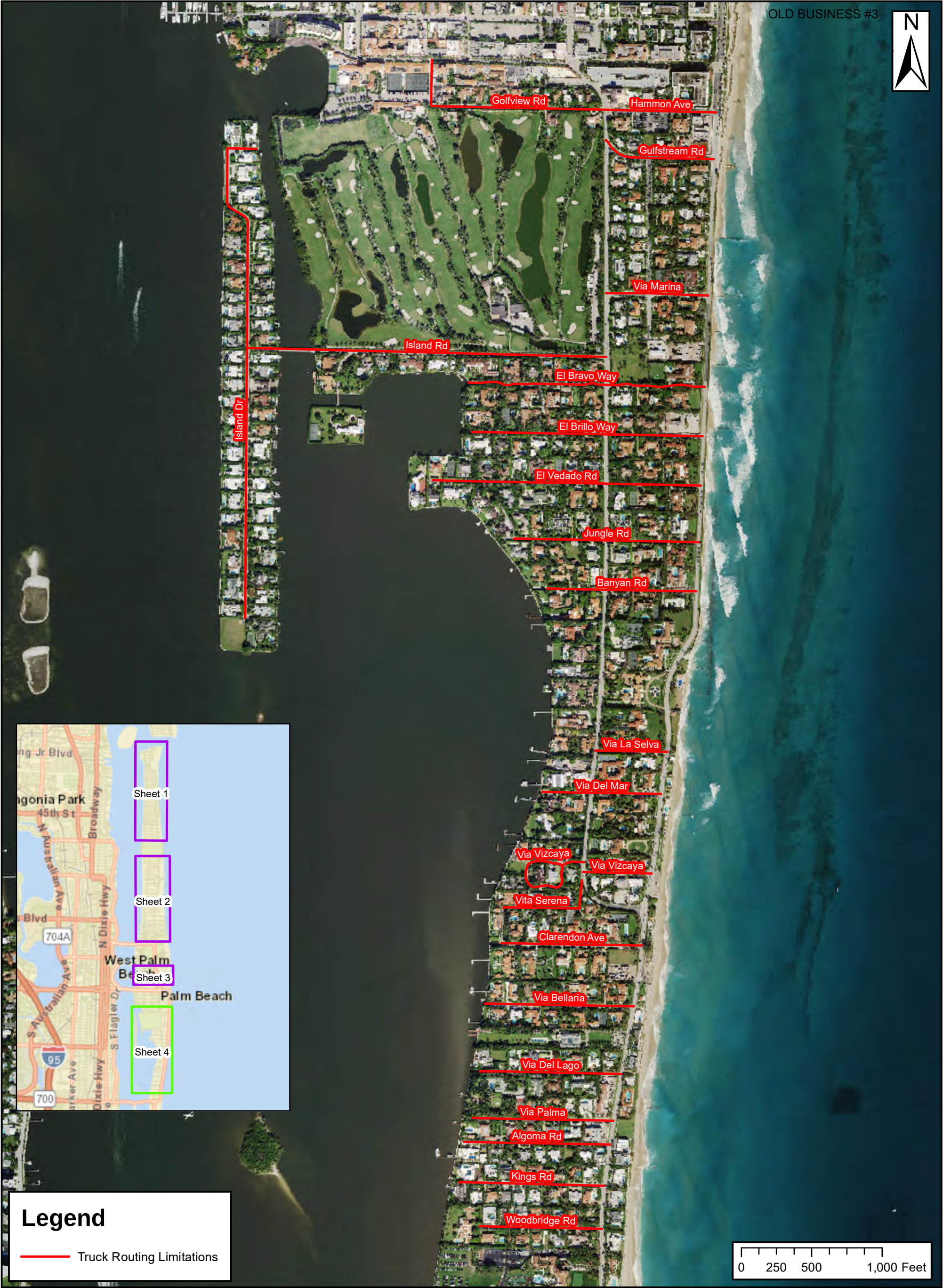


Truck Route Limitations

Public Works GIS

Sheet No.
3 of 4

Date 1/19/2022
PAGE 27



Map Location:

Hammon Ave to Woodbridge Rd

Map Description:

This map shows truck route limitations on East-West roads in The Town of Palm Beach.



Truck Route Limitations

Public Works GIS

Sheet No.

4 of 4

Date

1/19/2022

East/West Roads for Truck Routing Limitations			
Algoma Rd	El Mirasol	Miraflores Dr	Seagate Rd
Angler Ave	El Pueblo Way	Mockingbird Trl	Seaspray Ave
Antigua Ln	El Vedado Rd	Monterey Rd	Seaview Ave
Arabian Rd	Emerald Ln	N Lake Way	Seminole Ave
Atlantic Ave	Esplanade Way	N Woods Rd	Southland Rd
Bahama Ln	Everglade Ave	Nightingale Trl	Sunrise Ave
Banyan Rd	Fairview Rd	Ocean Ln	Sunset Ave
Barton Ave	Garden Rd	Ocean Ter	Tangier Ave
Bermuda Ln	Golfview Rd	Oleander Ave	Tradewind Dr
Canterbury Ln	Grace Trl	Onondaga Ave	Via Bellaria
Caribbean Rd	Gulfstream Rd	Orange Grove Rd	Via Del Lago
Casa Bendita	Hammon Ave	Osceola Way	Via Del Mar
Chateaux Dr	Indian Rd	Palmo Way	Via La Selva
Cherry Ln	Island Dr	Park Ave	Via Las Brisas
Clarendon Ave	Island Rd	Pendleton Ave	Via Linda
Clarke Ave	Jamaica Ln	Pendleton Ln	Via Los Incas
Colonial Ln	Jungle Rd	Phipps Estates Dr	Via Marila
Coral Ln	Kawama Ln	Plantation Rd	Via Marina
Country Club Rd	Kenlyn Rd	Polmer Park	Via Palma
Crescent Dr	Kings Rd	Primavera Ave	Via Sunny
Debra Ln	La Costa Way	Queens Ln	Via Tortuga
Dolphin Rd	La Puerta Way	Reef Rd	Via Vizcaya
Dunbar Rd	Laurian Ln	Ridgeview Dr	Vita Serena
E Inlet Dr	List Rd	Root Trl	W Indies Dr
Eden Rd	Maddock Way	S Woods Rd	Wells Cir
El Bravo Way	Manana Ln	Sandpiper Dr	Wells Rd
El Brillo Way	Mediterranean Rd	Sanford Ave	Windsor Ct
El Dorado Ln	Merrain Rd	Seabreeze Ave	Woodbridge Rd



TOWN OF PALM BEACH

Planning, Zoning & Building Department

"THREE STRIKE" CONSTRUCTION PARKING AND CONSTRUCTION SITE MANAGEMENT PROGRAM AFFIDAVIT

Re: Permit # _____

I, as the Primary Contractor,

Name

License Number

Do hereby attest that I have been provided with copies of Ordinance No. 28-2021 and Resolution No. 001-2022, which collectively create the "Three Strike" Construction Parking and Construction Site Management Program. I have reviewed the documents and understand that this program provides "strikes" against the construction project for violations of the Town's parking requirements and construction site management requirements. Once a construction project has three "strikes", the project will be shut down via a Stop Work Order issued by the Planning, Zoning and Building Department. At that point, only the Town Council can restart the construction project. I further attest that I have provided this information to the Property Owner(s).

Signature

STATE OF FLORIDA
COUNTY OF _____

Sworn to and subscribed before me this ____ day of _____, 202__

By _____
Notary Public, State of Florida

(Print, type or stamp name)

Commission No.: _____

Personally known _____ or

Produced Identification _____

Type of identification produced. _____

ORDINANCE NO. 28-2021

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 18, BUILDINGS AND BUILDING REGULATIONS, BY CREATING ARTICLE VII. - CONSTRUCTION SITE MANAGEMENT, AND BY ADDING SECTIONS 18-309 AND 18-310; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. Chapter 18, Buildings and Building Regulations, at Article VII, by creating Article VII. - Construction Site Management, and by adding Sections 309 and 310, to read as follows:

"ARTICLE VII. – CONSTRUCTION SITE MANAGEMENT

Sec. 18-309. – Maintenance of construction sites.

Property owners and their contractors shall be responsible for the implementation, installation, and maintenance of all required demolition and construction screening, perimeter landscaping and screening, on-job toilet facilities, truck logistics and staging, and other required site matters required by this chapter (see Sections 18-2, 18-3, 18-86, 18-111, and 18-201).

Any Town-documented lack of required item(s) or lack of maintenance of the item(s) shall be a violation of this chapter and each violation will constitute one strike under the "3 Strike Rule", which is detailed in the Town Right of Way Manual, Chapter XII, Miscellaneous Provisions, Construction Parking & Construction Site Management. Compliance with the Town Right of Way Manual is mandated by Section 18-111.

Sec. 18-310. – Noise and Construction hours.

Property owners and their contractors shall be responsible for complying with the noise regulations and hours for construction work, contained in Chapter 42, Environment, Sections 42-197 through 42-199.

Each Town-documented violation of these sections will constitute one strike under the "3 Strike Rule", which is detailed in the Town Right of Way Manual, Chapter XII, Miscellaneous Provisions, Construction Parking & Construction Site Management. Compliance with the Town Right of Way Manual is mandated by Section 18-111."

Section 2. Severability. If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 3. Repeal of Ordinances in Conflict. All other ordinances of the Town of Palm Beach, Florida, or parts thereof, which conflict with this or any part of this Ordinance are hereby repealed.

Section 4. Codification. This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach, Florida.

Section 5. Effective Date. This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this 14th day of December, 2021, and for second and final reading on this 11th day of January, 2022.

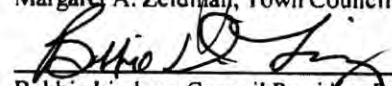

Danielle H. Moore, Mayor

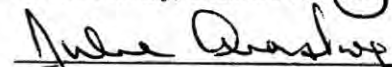


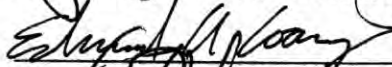
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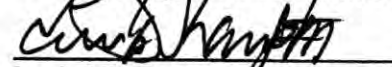

Pat Gayle-Gordon, Acting Town Clerk


Margaret A. Zeidman, Town Council President


Bobbie Lindsay, Council President Pro Tem


Julie Araskog, Town Council Member


Edward Cooney, Town Council Member


Lewis S.W. Crampton, Town Council Member

RESOLUTION NO. 001-2022

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE DEPARTMENT OF PUBLIC WORKS ENGINEERING DIVISION STANDARD APPLICABLE TO PUBLIC RIGHTS OF WAY AND EASEMENTS, BY CHANGING THE TITLE AND AMENDING CHAPTER XII, MISCELLANEOUS PROVISIONS, CONSTRUCTION PARKING

WHEREAS, the Town Council has adopted the Department of Public Works, Engineering Division Standards Applicable to Public Rights of Way and Easements (aka "Right of Way Manual") by Ordinance 11-94 on July 12, 1994; and

WHEREAS, the Right of Way Manual is reviewed from time to time and may be modified by Resolution of the Town Council; and

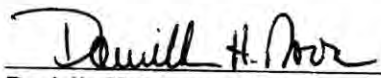
WHEREAS, the Town has determined that the section regarding "Construction Parking", found in the Right of Way Manual, Chapter XII, Miscellaneous Provisions, shall be titled "Construction Parking and Construction Site Management"; and

WHEREAS, the Town has determined that certain construction site violations should be added to the Right of Way Manual at Chapter XII, Miscellaneous Provisions, Construction Parking and Construction Site Management.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL of the Town of Palm Beach, Palm Beach County, Florida, as follows:

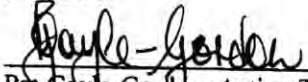
Section 1. The Right of Way Manual is hereby amended at Chapter XII, Miscellaneous Provisions, Construction Parking, as provided on Exhibit "A", attached.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 11th day of January, 2022.



Danielle H. Moore, Mayor

ATTEST:



Pat Gayle-Gordon, Acting Town Clerk



EXHIBIT "A"

Town Public Works Right of Way Manual

Chapter XII. Miscellaneous Provisions

Construction Parking & Construction Site Management

Construction parking on public streets and construction site management shall be controlled in order to protect the public's health, safety and welfare. The rules and procedures outlined below are commonly referred to as the Town's "3-Strike Rule".

All vehicles belonging to personnel working on or visiting a construction site from the date of the issuance of a building permit, to the date of the issuance of the certificate of occupancy, shall be parked on the construction site at all times. If the site cannot accommodate such vehicles, then the contractor may initiate car and/or truck pooling, apply for up to, but not more than, three (3) right-of-way permits for parking construction vehicles on the street in front of the construction site or, utilize both options in order prevent unnecessary congestion adjacent to the construction site.

The following rules and procedures shall govern the 3-Strike Rule:

1. Owner/contractor may apply for up to, but not more than, three (3) right-of-way permits for the temporary parking of construction-related vehicles.
2. Contractor will be asked if right-of-way parking permits are anticipated at time of initial building permit application. If anticipated at that time, or any subsequent time, a parking plan must be provided on an application form as prescribed by the Town, at a legible scale, as determined by the Town which clearly illustrates the entire construction site.
3. Applications must include a notarized signature from the property owner acknowledging understanding of the 3-strike rule in its entirety. A notarized power of attorney signature will be accepted by the Town, provided it specifies that the owner has been personally informed of the entire 3-strike rule.
4. The Public Works Department will review all such applications upon payment of the following fee(s) (see Appendix C). Public Works shall determine whether or not to approve the application, and if approved, whether 1, 2, or 3 right-of-way permits are issued.
5. The contractor must apply for a permit(s) from Public Works within seventy-two (72) hours in advance of the short-term use of the public right-of-way. Only extreme extenuating circumstances will be considered otherwise.
6. As a condition of approval, contractor is required to provide the Town with tag numbers of all vehicles authorized by the contractor to work at the site and is responsible for updating for any reason that may cause a change in the tag number list for a job site. The Director of Public Works or the Director's designees, which may include code enforcement officers, parking enforcement officers, and police officers, are authorized to enforce all "3-strike rule" provisions and to issue citations for violations of these provisions. Parking permit must be displayed on the dashboard of the vehicle. Failure to comply will result in a strike.
7. Owner/contractor must designate a private employee to act as a traffic monitor at each site to enforce Town rules when on-street construction parking is allowed. The traffic monitor must be present whenever work is occurring. Failure to do so constitutes a strike.

8. If the Town finds that there is no dedicated traffic monitor at a construction site, all right-of-way permits shall be immediately revoked and one (1) strike will be assessed.
9. When car or truck pooling is utilized, no substitute on-street parking spaces in the Town can be utilized for said purpose. Failure to comply will result in a strike.
10. Worth Avenue right-of-way permits shall be limited to two (2) vehicles for purposes of loading or unloading and for essential construction activities. Parking of construction vehicles that are not actively involved in the loading and unloading process will not be permitted. Failure to comply will result in a strike.
11. Only original Town-issued permits are valid. Permits may be transferred between vehicles but are valid only for the construction site for which they are issued. Failure to comply will result in a strike.
12. Copying, forging or duplication of a right-of-way permit is prohibited. All right-of-way permits will be immediately revoked if the Town determines that duplication or abuse has occurred.
13. Additional permits may be issued for the three (3) week period prior to the estimated date of issuance of the certificate of occupancy in the event said vehicles cannot be accommodated on site. The number of permits granted shall be determined by the Director of Public Works, or his designee.
14. Property owners and their contractors shall be responsible for the implementation, installation, and maintenance of all required demolition and construction screening, perimeter landscaping, screening of on-job toilet facilities, following the truck logistics and staging plan, and any and all site conditions required by Chapter 18, Buildings and Building Regulations, including Sections 18-2 (Landscaping; maintenance where used for screening), 18-3 (On-job toilet facilities, required), 18-86 (Construction staging and truck logistics plan), 18-111 (Compliance with the Town's right of way manual), and 18-201 (Construction screening). Any Town-documented lack of the required item(s) or lack of maintenance of the item(s) will constitute one (1) strike, and the Town will concurrently prosecute the violation(s) through the Code Enforcement process.
15. Property owners and their contractors shall be responsible for compliance with the noise regulations and the hours for construction work, found in Chapter 42, Environment, Sections 42-197 through 42-199. Any Town-documented violation of these sections will constitute one (1) strike, and the Town will concurrently prosecute the violation(s) through the Code Enforcement process.
16. Failure to comply with the aforementioned conditions may result in the suspension, fines, or in the case of repeat offenses, the cancellation of the violator's building permit.
17. Penalty for parking in the right-of-way in violation of this section shall be \$150 per day/per vehicle for the first offense, \$250 per day/per vehicle for the second offense, and \$500 thereafter.
18. Said penalty may be appealed in writing within seven (7) calendar days of the date of issuance to either the ~~Director of Public Safety~~ Chief of Police or the Director of Public Works (dependent upon the Department issuing the ticket), who shall, thereafter, act on said appeal. If the appeal is upheld, then the 1st, 2nd, or 3rd strike, as applicable, shall be removed from the record. Construction may continue until the appeal has been acted upon.
19. When a 3rd strike has been issued, and if an appeal is denied or is not filed in timely fashion, the Planning, Zoning & Building Department shall issue a Stop Work Order halting all continued activity at the site.

~~19.20.~~ All requests to lift the stop work order must be decided by the Town Council, upon written application to the Planning, Zoning & Building Department, no less than seven (7) days prior to a regularly scheduled monthly Town Council (Development Review) meeting.

~~24.21.~~ The Town Council shall have the power to admonish the contractor; take such action as deemed necessary to effect the stop work order on a permanent basis by nullifying the existing building permit; cause the contractor and/or property owner to enter into a binding agreement to memorialize the understandings between the Town and the contractor and/or property owner relative to all conditions placed upon the lifting of the stop work order, if applicable; establish penalties for future right-of-way violations the amount for which shall be in the sole discretion of the Town Council; and/or collect any unpaid penalties.

~~24.22.~~ If a Stop Work Order is lifted, no additional right-of-way permits for the duration of the work in question shall be issued unless specifically approved by the Town Council.

All vehicles belonging to personnel working on or visiting a construction site from the date of the issuance of the permit, to the date of the issuance of the certificate of occupancy, shall be parked on the construction site at all times. If the site is limited, then the contractor must initiate "car and/or truck pooling." A site plan may be required to illustrate that the site is being fully and efficiently used for construction material storage and parking. Additionally, contractor is required to provide to the Town the tag numbers of all vehicles authorized by the contractor to work at the site. The Director of Public Works or the Director's designees, which may include code enforcement officers, parking enforcement officers, and police officers, are authorized to enforce the provisions of this paragraph on construction parking and to issue citations for violations of these provisions.

All contractor's equipment shall be parked on the construction site. If the contractor cannot park his/her equipment on the site, or in the event all vehicles described herein cannot be parked on the site, a right-of-way permit will be required to park said equipment or vehicles in the public right-of-way. The contractor must apply for a permit or permits from the Public Works Director within seventy-two (72) hours in advance of the short-term use of the public right-of-way. (Only extreme extenuating circumstances will be considered.)

Parking permits will be issued for Worth Avenue for up to two (2) vehicles for purposes of loading or unloading and for essential construction activities. Parking of construction vehicles that are not actively involved in the loading and unloading process will not be permitted.

Parking permits for other areas in the Town will be issued for up to three (3) vehicles to park within the rights-of-way in the event it is determined that said vehicles cannot be accommodated on site. In addition, one permit shall be provided to the owner of the property. Only original permits are valid, no copies are allowed. Permits may be transferred between vehicles but are valid only for the construction site for which they are issued. Additional permits may be issued for the three (3) week period prior to the issuance of the Certificate of Occupancy in the event said vehicles cannot be accommodated on site. The number of permits granted shall be determined by the Director of Public Works.

Failure to comply with the aforementioned conditions may result in suspension, fines, or in the case of repeat offenses, the cancellation of the violator's building permit. Penalty for parking in the right-of-way in violation of this section shall be \$150 per day/per vehicle for the first offense, \$250 per day/per vehicle for the second, and \$500 thereafter. Said penalty may be appealed in writing within seven (7) calendar days of the date of issuance to the ~~Director of Public Safety~~ Chief of Police or the Director of Public Works (dependent upon the Department issuing the ticket), who shall act on said appeal. If the appeal is upheld,

then the 1st, 2nd, or 3rd strike, as applicable, shall be removed from the record. Construction may continue until the appeal has been acted upon.

Once a contractor has accumulated three (3) violations or "strikes" at a single site that have either exceeded the appeal period or the appeal(s) have been adjudicated in favor of the Town, as described in the Town Right of Way Manual, the Director of Planning, Building, and Zoning (PZ&B) shall have issued a "stop work" order as allowed in Section 18-204 of the Town Code.

If after issuing the stop work order and reviewing the case, the Director of PZ&B concludes there are no mitigating circumstances that caused the contractor to receive any of the three (3) strikes, the Director of PZ&B must forward the matter to the Town Council at their next available meeting should the contractor and/or the property owner request in writing that the Town Council give consideration to lifting the stop work order.

If after issuing the stop work order and reviewing the case, the Director of PZ&B is convinced that mitigating circumstances caused the contractor to receive any one of the 3 strikes, the Director of PZ&B may waive that strike causing the contractor to have 2 strikes, but only upon payment of a fine of \$250, plus payment of any outstanding right-of-way fines, accumulated interest, and subject to the Director of PZ&B being satisfied that there will be strict future compliance with the Town regulations and/or the Right-of-Way Manual by the contractor at the job site in question. Periodically, as often as determined appropriate by the Town Manager, the Director of PZ&B shall provide a report to the Town Manager delineating the mitigating circumstance(s) that gave cause for him or her to remove a strike incurred by a contractor under this section.

If there is another strike received by the contractor on the same job site that results in a total of 3 strikes at a given job site, the Chief of Police or the Director of Public Works (dependent upon the Department issuing the ticket) will notify the Director of PZ&B of the situation upon passage of the time allowed for appeal. The Director of PZ&B must suspend the work activity on the site via issuance of a "stop work" order as allowed in Section 18-204 of the Town Code, subject to reinstatement only by application of the building permit applicant to the Town Council at their next regularly scheduled meeting.

When the Town Council receives a written request to lift a stop work order the Town Council shall have the power to admonish the contractor; take such action as deemed necessary to effect the stop work order on a permanent basis by nullifying the existing building permit; cause the contractor and/or property owner to enter into a binding agreement to memorialize the understandings between the Town and the contractor and/or property owner relative to all conditions placed upon the lifting of the stop work order, if applicable; establish penalties for future right-of-way violations the amount for which shall be in the sole discretion of the Town Council; collect the "3 strike" fine, plus payment of any outstanding right-of-way fines and accumulated interest, as referenced herein below and to prohibit the issuance of any additional right-of-way permits for the duration of the work in question.

The fine for a third (3rd) and each subsequent strike shall be \$500 plus payment of any outstanding right-of-way fines and accumulated interest unless the Town Council chooses to invoke the use of a binding agreement memorializing a penalty structure to be paid to the Town for all future right-of-way violations in excess of three (3) to be paid in accordance with the terms and conditions of the binding agreement between the Town and the contractor and/or property owner. All fines and penalties shall be paid in full prior to issuance of a Certificate of Occupancy for the construction associated with the activity that generated the fines, penalties, and interest.

Before issuance of a building permit, a Power of Attorney or notarized owner's signature is required as the owner's acknowledgement of the "3 strike" rule.