



TOWN OF PALM BEACH

Town Manager's Office

TENTATIVE -
SUBJECT TO
REVISION

ORDINANCES, RULES AND STANDARDS COMMITTEE MEETING AGENDA

TOWN HALL
COUNCIL CHAMBERS - SECOND FLOOR
360 SOUTH COUNTY ROAD

Thursday, April 14, 2022
9:30 AM

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

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: April 14, 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: April 7, 2022

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

At the February 3, 2022, ORS Committee meeting staff provided an update on recently adopted ordinances meant to mitigate noise-related issues within the town. The amendments included in the ordinances are highlighted in blue in the attached 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. Please see Town Attorney, Skip Randolph's memo dated April 4, 2022, to Chief Caristo, and related documents, in preparation for discussion regarding item. two sections of the code.

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.

Related to this discussion item, staff has received a communication from Mr. Allen Willinsky, Director on the Board of Directors for the Ambassador II. See attached.

Attachments

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

J O N E S
F O S T E R

April 4, 2022

VIA EMAIL, ncaristo@palmbeachpolice.com

Nicholas P. Caristo,
Chief of Police
Town of Palm Beach
360 South County Road
P.O. Box 2029
Palm Beach, Florida 33480

Re: Constitutionality of Town of Palm Beach Noise Ordinance

Dear Chief Caristo:

Attached is a memo provided to the Town at the request of the Police Department relating to the constitutionality of the Town's noise ordinance, specifically Section 42-196 titled Prohibited Noise.

This memo relied primarily upon the Florida Supreme Court case of *State v. Catalano* which held that a Florida state statute regarding noise was unconstitutionally overbroad. The language of the state statute used the term "plainly audible" and it was that language which the Court held to be overly broad. The case did not address the language incorporated within the Town Code in Section 42-196 which prohibits "any loud or raucous noise" or, under Subsection 3, "any noise that annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of any considerable number of persons."

Although some of the reasoning in the Court's opinion may equally apply to an attack on the Town's ordinance, the Court did not directly hold the language "loud and raucous" unconstitutional. Indeed, the "loud and raucous" standard has been upheld by the U.S. Supreme Court in the case of *Kovacs v. Cooper*, 336 U.S. 77 (1949).

In addition to the above, the December 29, 2021 memorandum attached relied, in part, on the case of *Coalition of Immokalee Workers, Inc. v. Town of Palm Beach*, which held the Town's decibel ordinance unconstitutional when applied to a protest as the application of that ordinance was determined to be a violation against freedom of speech. The Town, therefore, needs to be very careful when using the ordinance relating to decibel levels when applied to an organization or individuals exercising their constitutional right of free speech.

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Nicholas P. Caristo
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The application of noise ordinances is indeed a complicated area of the law. The intent of the Courts is to prevent the application of vague and overly broad ordinances and to protect fundamental rights such as freedom of speech. Therefore, although I cannot give you or the Town absolute comfort in applying Section 42-196 in its current form, its language has been previously upheld by the Courts and, I believe, it would be upheld today if properly applied in instances not involving freedom of expression, but in instances where a noise is considered obviously loud and raucous and where the noise "annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of any considerable number of persons."

Be sure when applying Subsection 3 of 42-196 that you have statements from three or more persons attesting to this effect.

I hope this information is helpful. Please do not hesitate to contact me if you have any questions or comments.

Thank you.

Sincerely,

JONES FOSTER P.A.



John C. Randolph
Shareholder

JCR:jsw
Attachment

cc: Kirk Blouin, KBlouin@TownofPalmBeach.com
Jay Boodheshwar, JBoodheshwar@TownofPalmBeach.com
Captain Will Rothrock, WRothrock@palmbeachpolice.com
Wayne Bergman, WBergman@TownOfPalmBeach.com

J O N E S
F O S T E R

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. 2746,

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

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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:

the speaker finds more effective. *Id.*

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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.

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.

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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.

Proposed Revisions to the Town of Palm Beach's Noise Ordinances

Sec. 42-196. – Prohibited noise.

It shall be unlawful for any person or business 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.
- (4) This section shall be read in conjunction with Section 42-226 in order to properly determine the method for calculating such prohibited noise as well as section 42-228 in order to determine the appropriate decibel limits for the prohibited noise.

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.

Sec. 42-227. Geographic sections.

The criteria listed in sections 42-196 and 42-226 shall be applicable to the following geographical areas of 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.

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

"Night" as used in hereinabove is defined as the hours between 7:00 p.m. and 9:00 a.m. (Code 1982, § 12-47(c))

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.

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.

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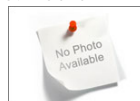
Florida Supreme Court to weigh state’s noise law



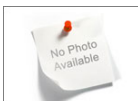
LLOYD DUNKELBERGER
Lloyd Dunkelberger is the Htpolitics.com Capital Bureau Chief. He can be reached by email or call 850 556-3542. [“More Dunkelberger”](#) Make sure to “Like” HT Politics on Facebook for all your breaking political news.

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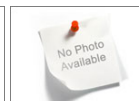
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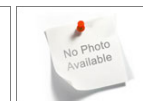
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Jay Boodheshwar

From: Antonette Fabrizi
Sent: Thursday, March 10, 2022 4:19 PM
To: Jay Boodheshwar
Subject: FW: Quality of Life in Palm Beach
Attachments: Dooley-pat-paper (1).pdf

Importance: High

From: Will Rothrock <WRothrock@PalmBeachPolice.com>
Sent: Thursday, March 10, 2022 4:02 PM
To: Town Clerks Staff <TownClerk@townofpalmbeach.com>
Subject: FW: Quality of Life in Palm Beach
Importance: High

Good afternoon,

Can you please include Mr. Willinsky's email and attachment as a resident communication in regards to any noise-related agenda items at the next ORS meeting on 3/24?

Thank you,

Captain Will Rothrock

Town of Palm Beach
 Police Department
 345 S. County Road
 Palm Beach, FL 33480
 Phone: 561-227-6352
 Fax: 561-835-4600
www.palmbeachpolice.com

From: awillinsky@aol.com <awillinsky@aol.com>
Sent: Tuesday, March 8, 2022 12:36 PM
To: Will Rothrock <WRothrock@PalmBeachPolice.com>
Cc: Nicholas Caristo <NCaristo@PalmBeachPolice.com>; Town Manager <TManager@TownofPalmBeach.com>; Nadine <nadj66@icloud.com>
Subject: Quality of Life in Palm Beach
Importance: High

*****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.*****

Good afternoon Captain Rothrock,

Please advise the details of how to participate in the March 21st council meeting on the Palm Beach noise codes as there are many issues I would like to address.

I want to share with you an excellent paper written by Patrick Dooley, a Sergeant with the Jacksonville Police Department which globally addresses the many issues with sound and noise enforcement. This paper should be read all who participate in the March 21st meeting.

For all the residents of Ambassador II, I will state unequivocally a quality of life does not exist when special events that require heavy equipment to build stages, sound stages, special strobe lighting and tents constructed in parking lots and tennis courts. I believe the town of Palm Beach must address this extraordinary rupture of peaceful enjoyment of our homes as well as those of neighboring residents. Common sense must prevail as this behavior cannot be tolerated. We understand the hotel needs to do business and we support that. That does not mean the Four Seasons hotel can go beyond the hotel structure and become a special events pavilion anytime their physical property cannot hold the event. The Town of Palm Beach must support the residential residents as this behavior is detrimental to the health and well-being of every resident, bar none.

Videos taken Sunday evening will be sent under separate cover as the files are too large to include in this email. One of the videos was taken from my terrace on the 4th floor of Ambassador II.

I look forward to your support and the town's support to right this wrong and bring back the quality of life that was promised when we invested in the Town of Palm Beach. We must maintain this special magic for every resident and future Palm Beachers.

Thank you for your support and consideration.

Respectfully,

Allen

Allen Willinsky
Director on the Board of Directors
Ambassador II
2780 S. Ocean Boulevard
Palm Beach, Florida 33480
Mobile 917.499.31789

Enforcing Noise Ordinances in Florida

Patrick K. Dooley

Abstract

Florida is changing and growing and as change takes place, law enforcement will be confronted with many issues. Noise ordinance enforcement is an area that traditionally law enforcement has not looked at as a high priority. Quality of life issues are one area that law enforcement may be given the responsibility of enforcing. Something initially viewed as a minor complaint can have serious effects on the residents of a community. Most communities in Florida have a noise ordinance in one form or another. Enforcement of noise ordinances is a science that administrators should look at from a training prospective as well as realistic prosecution. This paper will explore the different types of ordinances as well as the proper equipment to be used.

Introduction

As Florida moves into the new millennium, many problems will continue to emerge. Communities are growing as never before, fueled by the large tourism industry. Our woodlands and wetlands are giving way to new developments. New entertainment theme parks open on a regular basis. Beautiful beaches all over Florida have seen dramatic changes. The sand dunes and sea oats are giving way to homes and condominiums. As these changes take place, new problems arise. Bars, restaurants and hotels line the roadways. As these areas expand, they move closer to our residential neighborhoods, exposing sounds of loud music, traffic and machinery to adjacent homes. If gone unchecked by the local governments, the quality of life of the residents will decline.

When an agency begins receiving noise complaints, often from a single complainant, it is very easy to classify that individual as overly sensitive, or even a chronic complainer. But the problem goes much deeper than that. We must look at several issues to fully understand the magnitude of the problem of noise. We must first understand the difference between sound, and noise.

There are physical and psychological effects of noise on individuals. Sleep deprivation can have devastating effects on people. People have been driven to drastic measures as a result of stress brought on by a noise complaint. Do the rights of individuals to not have their lives interfered with by noise, take precedence over other individuals rights to conduct business for profit?

The goal of this research paper is to bring about a better understanding to law enforcement the need to properly train officers who are given the responsibility of enforcing noise ordinances in Florida. Literature reviews are used to provide a basic understanding of noise, and its effects on communities. Previously documented research will assist in exposing the detrimental effects of noise from a psychological, as well as a physical stand point. Studies of noise conducted by various sources will be used to demonstrate the need for proper enforcement. The director of Rutgers University, College of Environmental Science was very helpful with technical assistance.

Research Problem

Noise ordinance enforcement in most communities is not a high priority. Most communities in Florida have a noise ordinance or code in one form or another. However, enforcement is something we do not practice on a regular basis unless a complaint is received. Once the complaints begin, we are charged with a task of enforcement. In many agencies the officers may not be properly prepared to take an enforcement action that will result in a strong case for the prosecution.

Currently there are many very different noise ordinances throughout the state. These ordinances or codes have broad differences. Some are based simply on a nuisance statement, while others are performance based. Performance based ordinances have specific sound level guidelines which after taking a sound level reading, clearly state what is, and what is not a violation.

When a local government chooses to use a performance-based type ordinance, the personnel assigned to the enforcement of the ordinance have very little, or no training in the use of sophisticated measurement equipment. In these situations the measurement equipment can vary greatly. There are sound level measurement devices that are of a high quality, affordable, and with some instruction on the operation, are relatively easy to use. The instruments used for measuring sound vary a great deal in cost, as well as quality. This research will examine instruments that are available, and which ones have proven to be dependable and accurate. Many ordinances are written in a manner that a very specific type of decibel meter would be required for proper enforcement. Yet, these same jurisdictions do not possess the equipment required to enforce their own ordinances. In many cases they find that equipment this specific, is just not affordable. In other cases a city will purchase a decibel meter which is so difficult to use, and they later find it to be money wasted.

As Florida continues to grow, so will litigation of cases involving noise ordinance enforcement. It is for this reason that law enforcement administrators must ensure that enforcement is taken seriously. This research will attempt to answer the following questions concerning noise ordinance enforcement.

- 1) At what point does sound become noise?
- 2) Is there a need for proper noise ordinance enforcement?
- 3) Do current noise ordinances have a realistic impact on our communities?
- 4) Do agencies provide proper training to personnel assigned to noise ordinance enforcement?
- 5) Would mandated guidelines for noise ordinance enforcement be beneficial to communities?

Background

With the addition of loudspeakers, music more readily crosses from one property line to another. This can interfere with peace and tranquility of a community. The United States Supreme Court recognized the rights of residents to maintain their privacy. As early as 1949 it recognized local government's duty to regulate, and enforce laws protecting individuals from the invasion of amplified music. The court stated, "in his home or on the street he is practically helpless to escape this interference with his privacy by loud speakers except through the protection of the municipality." (Kovac v. Cooper, 336 U.S. 77, 87 (1949))

The Florida Constitution, states that "it shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provisions shall be made

by law for the abatement of air and water pollution and excessive and unnecessary noise.”(Florida Constitution, Article II, Section 7)

Sound Wave Measurement

Sound waves are a series of compressions and refractions within a medium. There are two components of sound waves, intensity and frequency. Intensity is determined by the amount of energy in a sound wave. This contributes to the loudness as perceived by the human ear. The intensity, or sound pressure is reported and measured in decibels (db.) (Zwerling, 1996). The decibel scale is similar to the Richter scale in the respect that they are both logarithmic. (When there is an increase of three decibels of sound pressure, humans perceive a 10-decibel increase as a doubling of the loudness.) Frequency is measured by how fast the sound waves are moving. This determines the pitch of the sound. The term Hertz (Hz) is used to report the measurement of frequency. Frequency is measured in cycles per second. (Zwerling, 1996)

Most ordinances have it written into them that require measurement with a decibel meter be taken on the A-scale. The reason for this is that the A-scale is designed to mimic that of human hearing. When a measurement is taken with a decibel meter on the A-scale, the result is a single number for measurement that would be closest to the way the human ear would perceive that particular source. A single number of measurements are then reported, such as 65db.

There is a recent interest in areas of Florida to allow enforcement officers to take sound measurements with meters using the “C” scale. The “C” scale weighting system allows the sound meter to pick up low frequencies. These are the intrusive sub-woofer type of bass sounds that can penetrate structures and result in physical sensation. This type of base is not readable using the “A” scale. (Zwerling, 2000)Most quality sound meters are already equipped with “C” scale weighting, and can be changed from “A” to “C” with a simple switch. When properly applied the “C” scale is a valuable tool in sound enforcement.

Methods

Mail surveys were conducted with State Attorney’s throughout the state, to determine their opinions of what is proper to present a clear and convincing case in the courts. The survey consisted of six questions. (Appendix A) It was sent to all of the State Attorney’s Offices representing each judicial circuit.

The paper also examines the two most common types of noise enforcement codes. The first being the nuisance codes. The second are performance codes. Nuisance codes have in some cases been found to be unconstitutional. This is due to their lack of specific wording, and not clearly stating what in fact is a violation. The performance based codes are codes which have more often been upheld by the courts. They are based on a very clear and specific statement of what is a violation. Performance codes contain very specific guidelines for enforcement. They usually also contain a table which will state the allowable decibel levels. (Appendix B)

The proper preparation and presentation of a case is a major basis of this research paper. There are many factors to consider when investigating a noise complaint. One of the questions asked most often, is how do you determine what noise is coming from the source of the complaint, and what noise is coming from an additional outside source, such as traffic. These questions will be answered, in a very simple and clear manner. Much of the sound measurement instruction was found in previous research conducted

by Department of Environmental Sciences at Rutgers University as well as literature reviews.

Results

Survey Results from State Attorney's

The response to the mail survey was positive with a 68% response to the survey. The responses will be broken down by question.

- 1) What points do you look for to prosecute a noise violation? Note: Respondents to question one in some cases provided multiple answers.
 - a. 54% agreed that previous warnings, or past problems were important for prosecution.
 - b. 38% stated the level of noise was important. (db level)
 - c. 38% stated that the elements of the ordinance must be met.
 - d. 38% required the number of victims / witnesses present.
 - e. 23% stated that the area of the complaint was important, residential or business.
 - f. 15% said that the time of day of the violation was important.
- 2) Do you believe that it is better from a prosecution stand point to enforce an ordinance or code that sets forth specific decibel levels or one that is nuisance based?
 - a. 62% preferred an ordinance that is performance based.
 - b. 31% preferred a nuisance based ordinance.
 - c. 8% had no preference.
- 3) Have you found officer training to be adequate in cases that you have prosecuted?
 - a. 38% had no experience or were not aware of any cases for prosecution.
 - b. 30% said that officer training was adequate.
 - c. 15% said that officer training was not adequate for prosecution.
 - d. 8% believe that it depends on the type of case.
- 4) Are noise measurement devices used by officers noted by the court to be adequate?
 - a. 54% are not aware of any noise measurement device owned by their city or county.
 - b. 31% said that law enforcement does not use noise measurement devices.
 - c. 15% have been found to be adequate.
- 5) Do Assistant State Attorney's receive any training to assist them in understanding sound measurement?
 - a. 100% stated that they received no training in sound measurement.

6) Would any officer training assist you in prosecuting a noise violation case?

- a. 69% stated documented training would be beneficial for prosecution.
- b. 31% responded that training would be of no help.

Physical Effects of Noise

Noise can affect people in different ways. It has been found that sleep interference occurs at an average night time sound level of 35db. It has also been determined that younger people are found to be less sensitive to sleep interruption by about 10db. (Suter, 1991) When measuring sound, and the effect of sound passing through barriers or walls, sound reduces by approximately 15db. Meaning that if sound were to be measured at 50db outside of a home, the db reading on the inside of the home would be approximately 35db. Thus allowing uninterrupted sleep. Unregulated noise has been proven to have serious adverse effects on people far beyond simple annoyance. Exposure to loud noise has resulted in uncontrollable stress which can result in mood swings as well as hormonal and nervous system changes in otherwise healthy subjects. (E.P.A. 1974) The stress, tension, and fatigue associated with long term exposure to noise has destroyed marriages, caused others to loose their jobs, and forced other to sell their homes at considerable losses. (Zwerling, 1996)

The Ordinance or Code

Very often it is found that police rely on nuisance ordinances for enforcement of a noise complaint. The reason is that in many cases the field enforcement of a performance based ordinance does not meet the need of the field officer. The equipment it not readily available or the officer does not have proper training to operate the equipment. This lack of training may also cause the officer to be uncomfortable defending the case in court.

There is wording that can be used in a nuisance based code that has been upheld by the courts. A standard of "plainly audible" has been held to be neither broad or vague. (State v Ewing, 914 P. 2d 549, Haw (1996)) This wording is clear and easily understood by anyone. The subjectivity has been removed. The following standard can be used in an ordinance to address a sound system: "plainly audible" means any sound that can be detected by a person using his or her unaided hearing faculties. When considering a workable ordinance for a residential or commercial area, simply apply the "plainly audible" wording using specific times and distances.

In many instances performance based codes or ordinances are written without input from experts in the field of noise or acoustics. Law enforcement is also not solicited for input. With a desire for continuity, ordinances are often copies from another jurisdiction. The result in many cases is the perpetuation of a vague or ineffective ordinance.

Several ordinances in Florida currently are based upon statistical averaging. (e.g., L10- the sound level which is exceeded ten percent of the time.) This type of ordinance requires very sophisticated equipment which is very expensive. There are still other ordinances which do not allow noise to exceed a specific level for a given period of time. An example of this would be an ordinance which states for example, the noise level shall not exceed X db, for a three minute commutative period in any sixty minute period. When an officer wants to enforce an ordinance of this nature it very difficult to prove that the source was above the limit for a specific period of time without measurement

equipment with a recorder built in. This type of equipment is also expensive and requires a full sixty minutes of sound measurement.

There are alternatives which are effective. An ordinance which states a specific db level that should not be exceeded when measuring a single incident that exhibits the everyday operation of the location in question. (Zwerling, 1996) Wording an ordinance in this manner would include noises such as a truck loading or unloading, or an annoying piece of machinery. This type noise may be relatively short in duration but they are included in an ordinance worded in this manner. (Zwerling, 1996)

There are several other considerations to look at when deriving a workable and enforceable noise ordinance. Agencies should develop a noise violation report form. This form needs to include relevant information such as date, time, calibration times, location, and person taking the reading. Another piece of helpful information is a diagram of the scene. This will give the prosecutor a much better understanding of the location when presenting the case to the courts. Weather conditions should always be stated in the report. Wind and temperature can all have effects on the readings the sound measurement equipment provide. Sound measurements should not be taken when precipitation is falling or on the ground, because the moisture can damage the sound meter. (Cowan, 1994) The report form should also include the type, and model of the equipment used for the sound measurement. (Appendix C)

Sound Measurement Equipment

Sound measurement equipment is manufactured in accordance with the American National Standards Institute (ANSI). (Cowan, 1994) In a case where a private party had continuously loud stereo, chances are they would not challenge a db meter purchased at an electronic outlet. A case made against a bar, with several prior complaints will probably challenge the sound measurement device. So it is important to use equipment that meets the industry standards. A good quality measurement device can be purchased with a calibrating device for about \$1000.00. This type of a device is relatively easy to operate with some instruction, and is reliable enough to withstand a challenge in the courts.

Typical sound level calibrators are small and can be handled with relative ease. Most come with an adapter to fit the meter to be calibrated. With most sound meters, the calibrator fits over the end of the meter. Then the calibrator is turned on. The sound meter must read within two db of the calibrators sound pressure given. Meaning if the calibrator is displayed at 114db, the meter must be within two db to continue the measurements. If the meter is out of the two db range, then the meter may be manually adjusted to come into compliance. All sound meters should be calibrated by the factory at least once per year.

Taking the Sound Measurement

The first step to taking a sound measurement is to determine the actual source of the noise. Walking around the source of the noise will be helpful when completing the diagram portion of the sound measurement report form. It will also provide you with better testimony should the case go to court. The report form should be filled out completely. The noise source should be described, and if the measurement taken represents a normal cycle of operation for the facility. (Zwerling, 1999) The instrument used for the sound measurement should be properly calibrated, and the results recorded. Noting the results of the field calibration is absolutely required for a valid sound measurement report form. (Zwerling, 1999)

There are several ways to measure residual sound levels in a residential neighborhood. The investigator can walk in the opposite direction of the source, away from the residual noise, or measurement may taken in a similar neighborhood with away from the source of the complaint. The person taking the measurement may use a barrier to block the source of outside noise. (Zwerling, 1999)

When taking the sound level reading, it is best to take a reading with the source off. This will give a reading of the background sound level. A reading of the ambient sound level should be taken with the source of the complaint on as well. To determine the difference between the ambient and background sound levels the table below can be used. (Cowan, 1994)

Table 1

Correction for Background Sound Levels.

Difference between Ambient and Background Sound Levels	Corrections Factor to be subtracted from Ambient Level for Source Level
3	3
4, 6	2
6- 9	1
10 or more	0

Measured in dbA

If the ambient noise level is less than 3 dbA higher than the background sound level, than the source level cannot be determined. In this case no violation can be substantiated. (Cowan, 1994)

When taking sound measurements the time of the measurement should last at least five minutes in duration. This will insure the measurements are accurate for the particular source in question.

Discussion

The subject of noise enforcement is a quality of life issue. An issue which some do not even believe to be a law enforcement issue. In some jurisdictions law enforcement is not given the responsibility of enforcement. In locations where law enforcement is charged with noise enforcement, we must go beyond the surface and examine the facts. The facts are that we have a responsibility to maintain the quality of life with the tools our communities give us. The ordinances or codes whether they are performance based or nuisance based must be enforced. If a community does not choose to restrict sound, then the ordinance should not exist.

If law enforcement administrators are charged with responsibility of enforcement of noise ordinances, then there is a responsibility that we provide the proper tools, and training to the officers expected to investigate these types of complaints. All too often officers expect officers to be able to complete a task, however difficult, without adequate training, or no training at all. The measurement of sound, is based in scientific fact. This is a science that without some training very few people understand. Yet, how many times do officers respond to a noise complaint and not have any real understanding of what they are measuring.

There are those who would argue that this is such a minor offense that it does not warrant too much of an investment in training. When a police officer becomes certified in this state to operate a traffic radar unit, the officer receives forty hours of mandatory training. Yet there is no requirement for officers who use sound measurement devices to make a case. I am not suggesting a forty hour state mandated course, however I do believe the research shows that some training should be required.

Sergeant Patrick Dooley has been with the Jacksonville Beach Police Department since 1991. He has worked in several areas to include patrol, detectives division, evidence technician, gang intelligence, field training officer and juvenile specialist. Pat is pursuing his Bachelor's degree in Criminal Justice from St. Leo University. He is also a graduate of the FBI National Academy, 228 Session.

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Appendix A

SURVEY QUESTIONS

State Attorneys

- 1) What points do you look for to prosecute a noise violation?
- 2) Do you believe that it is better from a prosecution stand point to enforce an ordinance or code that is sets forth specific decibel levels or one that is nuisance based?
- 3) Have you found officer training to be adequate in cases that you have prosecuted?
- 4) Are the noise measurement devices used by officers noted by the courts to be adequate?
- 5) Do Assistant State Attorneys receive any training to assist them in understanding sound measurement?
- 6) Would any documented officer training assist you in prosecuting a noise violation case?

Appendix B

Maximum Permissible Sound Levels

<u>Source Property</u>	<u>RECEIVING PROPERTY</u>		
	<u>RESIDENTIAL</u>	<u>COMMERCIAL</u>	
	<u>7:00am - 10:00pm</u>	<u>10:00pm - 7:00am</u>	<u>All Times</u>
Residential	55	50	65
Commercial	65	50	65
Industrial	65	50	65

Appendix C

SOUND MEASUREMENT REPORT FORM

NAME/ADDRESS OF NOISE SOURCE:

DATE _____ DAY OF WEEK _____ TIME _____ am /pm.

Investigating

Agency _____

Investigating Officer _____

Name of responsible party notified _____

Description of noise source to be measured: _____

Description of property receiving noise _____

Description of Residual Noises, (fairly constant in nature) _____

Description of Extraneous Noises, (intermittent in nature, and not from source) _____

DESCRIPTION OF INSTRUMENT:

SOUND LEVEL METER _____ MODEL # _____ ANSI TYPE _____

SERIAL # _____ DATE OF LAST CERTIFICATION _____

SOUND LEVEL CALIBRATOR _____ WIND SCREEN USED (YES/NO) _____

WIND METER USED (YES/ NO) _____ TIME OF CALIBRATION _____

WEATHER CONDITIONS:

PRECIPITATION _____ GROUND WET _____ TEMPERATURE: _____

WIND VELOCITY _____ TIME TAKEN _____

NEIGHBORHOOD RESIDUAL NOISE MEASUREMENT:

TIME : START / FINISH _____ READING RANGE (dbA) _____ TYPE RESIDUAL _____ LOCATION OF MEASUREMENT/ COMMENTS _____

MEASUREMENT OF TOTAL NOISE:

TIME : START / FINISH _____ READING RANGE (dbA) _____ CORRECTED (SOURCE) LEVEL _____ LOCATION / COMMENTS _____

Noise Measurement Taken By:

Reviewed By:

INCLUDE SITE SKETCH ON REVERSE (Include source, walk around, and exact measurement location)