

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 26 OF THE CODE OF ORDINANCES ENTITLED "ENVIRONMENT," ARTICLE IV. ENTITLED "SOUND CONTROL" BY ADDING SECTION 26-189, PURPOSE; ADDING SECTION 26-190, FINDINGS OF FACT; AMENDING SECTION 26-191, DEFINITIONS; AMENDING SECTION 26-192 TO AMEND AND CLARIFY UNREASONABLY EXCESSIVE NOISE PROHIBITIONS; AMENDING SECTION 26-193 TO CLARIFY AND AMEND EXCEPTIONS TO THE SOUND CONTROL ORDINANCE; AMENDING SECTION 26-194 TO CLARIFY CITATION PROCEDURE AND PENALTIES; ADDING SECTION 26-199, TO PROVIDE FOR TEMPORARY WAIVERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, excessive and unnecessary noise can cause adverse psychological and physiological effects on humans, and deprive people of the peaceable enjoyment of their private property; and

WHEREAS, the City Commission finds that an amendment to the Sound Control ordinance will establish specific permissible noise limits in order to provide for the abatement, prevention and prohibition of excessive and unnecessary noise so as to protect the health, safety, and general welfare of the residents of the City of Key West.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 26-189 is hereby added to the Code of Ordinances as follows*:

Sec. 26-189. - Purpose.

The purpose of this article is to establish specific permissible noise limits in order to provide for the abatement, prevention and prohibition of excessive and unnecessary noise so as to protect the health, safety, and general welfare of the residents of the City of Key West. Excessive and unnecessary noise can cause adverse psychological and physiological effects on humans, and deprive people of the peaceable enjoyment of their private property.

Section 2: That Section 26-190 is hereby added to the Code of Ordinances as follows:

Sec. 26-190. - Findings of Fact.

(a) Unreasonably excessive noise interferes with the quality of life and the health, safety and general welfare of the public.

*(Coding: Added language is underlined; deleted language is ~~struck through~~. Language added at first reading is double underlined.)

(b) In particular, unreasonably excessive noise can and does cause adverse psychological and physiological effects in humans, inefficiency, accidents and other undesirable and dangerous conditions.

(c) A substantial body of science and technology exists by which noise may be measured and substantially abated.

Section 3: That Section 26-191 of the Code of Ordinances is hereby amended as follows:

Sec. 26-191. - Definitions.

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

For the purpose of this article, the following terms, phrases, words, abbreviations and their derivations shall have the meaning herein given. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Words not defined shall be given their common and ordinary meaning, or for those so included, the meaning found in this article.

A-weighted sound level means the sound level as measured with the A-weighting network on a sound level meter meeting the standards set forth in the American National Standards Institute (ANSI) S1.4-1983 or its successors. The unit of reporting is dBA. Sounds measured with the "A" weighting network approximate the response of human hearing when measuring sounds of low to moderate intensity without an amplified low frequency component.

Amplified sound means the reproduction of sound from any radio, stereo, CD player, DVD player, microphone, drum, turn table, audio or visual equipment, musical instrument, sound equipment, sound amplification device, television set, exterior loudspeakers, bullhorn or any similar device.

C-weighted sound level is the sound level as measured using the "C" weighting network with a sound level meter meeting the standards as set forth in ANSI S1.4-1983 or its successors. The unit of reporting is dBC. The "C" weighting network is more sensitive to low frequencies than the "A" weighting network.

Commercial district means the HRO, HRCC-1, HRCC-2, HRCC-3, HNC-1, HNC-2, HCT, HPS (Mallory Square only), CL, CG, CT and A zoning districts.

Decibel means a logarithmic (dimensionless) unit of measure often used in describing the amplitude of sound. Decibel is denoted as dB.

~~Decibel means a measure of a unit of sound pressure. Sound waves having the same decibel level "sound" louder or softer to the human ear depending upon the frequency of the sound wave in cycles per second (i.e., whether the pitch of the sound is high or low). Thus, an A-weighted filter, constructed in accordance with the specifications of the American National Standards Institute, which automatically takes account of the varying effect on the human ear of different pitches shall be used on any sound level measurements required by this article. Accordingly, all measurements are expressed in dBA to reflect the use of this A-weighted filter.~~

~~Disturbing noise means an uninvited or disruptive level of noise that is unreasonably loud or that is raucous and jarring, due to volume, character, or duration, and that causes an actual interference with a person's ability to enjoy peacefully his residence or place of business.~~

Emergency and emergency work mean any occurrence or set of circumstances involving or creating actual or imminent physical trauma or property damage which demands immediate attention.

Noise control officer means environmental inspectors, building and zoning inspectors, code enforcement officers and police enforcement personnel authorized to enforce provisions of

this Code.

Property boundary means the imaginary line along the surface, and its vertical plane extension, which separates the real property owned, rented, or leased by one person from that owned, rented, or leased by another person.

Public right-of-way means any street, avenue, boulevard, lane, highway, sidewalk, alley, or similar place normally accessible to the public which is owned or controlled by a governmental entity or which has been dedicated to use or access for the benefit of the public or adjacent property owners.

Residential district means any zoning district within the City of Key West that is not specifically defined in this section as a Commercial District.

~~*Unreasonable noise* means:~~

~~(1) Any noise in or emanating from a commercial district which equals or exceeds a measured sound level of 75 dBA (maximum permitted sound level in decibels) collectively for more than 30 seconds of any measurement period which shall not be less than five minutes.~~

~~(2) Any noise in or emanating from a residential district which equals or exceeds a measured sound of 75 dBA between 8:00 a.m. and 7:59 p.m. and 60 dBA from 8:00 p.m. to 7:59 a.m. (maximum permitted sound level in decibels) collectively for~~

~~more than 30 seconds of any measurement period which shall not be less than five minutes.~~

Unreasonably excessive noise is any sound that exceeds the limits as defined in 26-192 below.

Section 4: That Section 26-192 of the Code of Ordinances is hereby amended as follows:

Sec. 26-192. - Prohibition against unreasonable noise.

Unreasonably Excessive Noise prohibited.

~~No person shall make, continue, or cause to be made any unreasonable noise or disturbing noise.~~

(a) Prohibition of unreasonably excessive noise. It shall be unlawful for any person(s), to permit, cause, allow, amplify, create, emit, or sustain unreasonably excessive noise on any property, including air space thereof, located in the City of Key West. Unreasonably excessive noise shall be that noise which exceeds the noise limitations set forth in subsection (b).

(b) Noise limitations.

(1) Within a commercial district as defined in this Article, the maximum dBA and dBC sound levels permitted on any property shall be as follows:

The average measurement taken between ten (10) and twenty

(20) seconds shall be no greater than the maximum levels set out below. The measurement shall be taken from the property line, or individual lease boundary in the case of property which has been subdivided by the execution of individual leases, of the noise generating property:

a. Seventy five (75) eighty-five (85) dBA or seventy seven (77) ninety-four (94) dBC between the hours of 4:00 p.m. and 2:59 a.m.

b. Sixty five (65) seventy-five (75) dBA or seventy five (75) eighty-four (84) dBC between the hours of 3:00 a.m. and 3:59 p.m.

(2) In all areas of the City of Key West, other than those areas listed in subsection (b) (1) above:

a. The average measurement taken between (10) and twenty (20) seconds shall be no greater than the maximum levels set out below. The measurement shall be taken from a receiving property at the property line closest to the noise generating property.

1. Sixty-five (65) dBA or seventy (70) dBC between the hours of 8:00 a.m. and 7:59 p.m.

2. Fifty-five (55) dBA or sixty-five (65)

dBC between the hours of 8 p.m. and 7:59 a.m.; or

b. In addition to subsection (b) (2) (a) above, unreasonably excessive noise is also noise that is unreasonably loud, raucous and jarring, due to volume, character, or duration, and that causes an actual interference with a reasonable person's ability to enjoy peacefully his residence. Noise which is plainly audible at a distance of fifty (50) feet or more in any direction shall create a rebuttable presumption of a violation of this subsection. This includes, but is not limited to, amplified sound and self-contained, portable, hand-held music or sound amplification or reproduction equipment operated on a private property, public property, or public right-of-way. "Plainly audible" shall mean any sound that can be clearly heard by a person using his normal hearing faculties, at a distance of fifty (50) feet or more from the source of the noise. To determine whether sound is "plainly audible," measurements shall be taken in accordance with the following:

A. The primary means of detection shall be by means of the officer's ordinary auditory senses, so long as the officer's hearing is not enhanced by any device, such as a microphone or hearing aid.

B. The officer must readily identify the offending location and the distance involved so as to confirm

the sound source.

C. The officer need not determine the particular words or phrases being produced or the name of any song or artist producing the sound. (For example, the detection of a rhythmic bass reverberating type sound is sufficient to constitute a plainly audible sound).

(3) If a complaint arises of unreasonably excessive noise emanating from a multistory structure, the determination of whether such sound constitutes unreasonably excessive noise shall be made from a story height equal to that of the sound source or from the nearest accessible point on the ground floor.

Section 5: That Section 26-193 of the Code of Ordinances is hereby amended as follows:

Sec. 26-193. - Exceptions.

The prohibitions contained in this article shall not apply to the following:

(1) *Emergencies.* The emission of sound for the purpose of alerting persons to the existence of an emergency or emergency vehicle or to the performance of emergency work.

(2) Church bells and chimes

~~Religious service or observance. Sound levels produced from a religious service or observance.~~

(3) *Construction/demolition.*

~~(A) Sound levels produced from tools and equipment in commercial construction, demolition, drilling, or reasonably similar activities. However, such sound levels are limited to the hours of 8:00 a.m. to 7:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturday. The tools and equipment must be muffled and maintained equal to the functional standards of the industry. No exceptions contained in this subsection shall apply on Thanksgiving Day, Christmas Day and New Year's Day.~~

~~(B)The city commission by resolution may extend the time limitations for the activities referenced in subparagraph (A) above upon a finding of the following:~~

~~i. The applicant for the extended exception has submitted a written request detailing the expanded hours sought/what activities will occur during such hours, the duration of the exception the necessity of the exception and any mitigation measures to be employed to minimize the impact of noise created by the activities;~~

~~ii. The extent of noise generated is outweighed by the public benefit of the activity.~~

~~(C) Notice of the city commission's proposed action on construction/demolition noise control waiver shall be mailed prior to the meeting at which the matter is to be considered to all property owners and occupants of property located within a 100-foot radius of the proposed construction/demolition. The applicant shall pay for the cost of the notices.~~

(4) *Domestic power tools.* Sound levels produced from any hand-powered or mechanically powered saw, sander, drill, grinder, lawn/garden tool or reasonably similar tools. However, to be lawful, sound producing the use must conform to industry standards for the equipment and must occur only between 8:00 a.m. and 7:00 p.m., Monday through Friday, and 9:00 a.m. and 5:00 p.m. on Saturday and Sunday only.

(5) *Public events.* Sound levels from public events and celebrations sponsored by the city or approved by resolution of the city commission, but only during the hours designated by the resolution.

(6) *Government radio transmissions.* Sound levels from equipment used by police, fire, and other city department radio or emergency equipment, and from similar equipment used by other government agencies in performance of official duties.

(7) *Public address systems.* Sound levels from public address broadcast systems used in public stadiums, ballfields, parks and schoolyards.

(8) *Sunset celebration.* Sound levels produced by performers engaged in activities sponsored by the city's lessee at Mallory Square Dock during sunset celebration.

~~(9) *Franchisees.* Narration of tours of the city's franchisees upon the city right of way.~~

~~(10)~~ (9) *Industrial equipment.* Noise levels for industrial equipment, including but not limited to air conditioners, generators, and pool pumps, must be set to reasonable industry standards for properly maintained equipment.

~~(11)~~ (10) *Sound created by safety and protective devices,* emergency equipment, including, but not limited to, emergency standby or backup equipment, necessary in the interests of the health, safety and welfare of the community.

Section 6. That Section 26-194 of the Code of Ordinances is hereby amended as follows:

Sec. 26-194. - Citation procedure and penalties.

(a) ~~Except as provided in subsection (c) of this section,~~ aAll citations for violations issued under this article shall be based on a complaint to the city. The complainant shall be identified by name and address, the sound source shall be

identified, and the investigating noise control officer shall verify all information provided by the complainant. The officer shall provide the complainant with a copy of the complaint form which may serve as a record of complaints relating to a property.

~~(b) A decibel meter shall be used for a complaint of unreasonable noise made at or within 100 feet of the property line of the sound source. The decibel reading shall be made at the location of the complaint. The investigating officer shall issue a citation for unreasonable noise, unless in his judgment a warning is sufficient to cease the violation. There shall be no more than a total of one warning per offending person or establishment.~~

~~(c) A complaint of disturbing noise may be made when the location of the complaint is beyond 100 feet of the property line of a commercial property sound source. Additionally, a complaint of disturbing noise may be made when the location of the complaint is a residential property and the location of the sound source is a residential property or a commercial property that was a residential property as of September 1, 2000, at any distance from each other. A decibel meter measurement is not required to determine disturbing noise. The investigating officer shall issue a citation if the complainant suffers~~

~~disturbing noise within the boundaries of his property. The investigating officer may issue a warning if in his judgment a warning is sufficient to cease the violation. There shall be no more than a total of one warning per offending person or establishment.~~

~~(d) If a complaint arises of unreasonably excessive noise emanating from a multistory structure, the determination of whether such sound constitutes unreasonably excessive noise shall be made from a story height equal to that of the sound source or from the nearest accessible point on the ground floor.~~

~~(eb) Upon the authorization of the city manager, the city may act as the complainant of unreasonably excessive noise when a commercial establishment from which alleged unreasonably excessive noise is emanating holds an entertainment license pursuant to division 2 of article II of chapter 18. A noise control officer shall conduct the decibel reading at any point beyond the property line of the sound source. In addition to its being subject to citation for unreasonably excessive noise, the establishment shall also be subject to the further penalties set forth in division 2 of article II of chapter 18.~~

~~(eb) Citations issued for unreasonably excessive noise under this article shall be of a content-neutral character.~~

~~(ed)~~ Any investigating noise control officer may issue a citation to an offender under this article.

(ed) The investigating noise control officer may issue a warning if in his or her judgment a warning is sufficient to cease the violation. There shall be no more than a total of one warning issued during any 12-month period.

(fe) Any person who violates any provision of this chapter and who shall be found violating or found in violation of any provision of this chapter shall be subject to the penalties as prescribed in section 1-15 of this Code.

~~(h)~~ ~~Notwithstanding the provisions of paragraphs (b) and (c) above, a complaint of disturbing noise may be made at any distance from a commercial or residential property when the location of the sound source is a public right of way. The investigating officer shall issue a citation if the complainant suffers disturbing noise within the boundaries of his or her property. The investigating officer may issue a warning if in his or her judgment a warning is sufficient to cease the violation. There shall be no more than a total of one warning issued during any 12 month period.~~

Section 7. That Section 26-195 of the Code of Ordinances is hereby amended as follows:

Sec. 26-195. Liability; citizen suit

(a) Liability. The maker or creator of unreasonably excessive noise ~~or disturbing noise~~ and the operator and/or owner of the premises that are its sound source shall each be subject to liability for violations of this article. If prosecuted jointly, each shall be jointly and severally liable for any fines imposed pursuant to this article. The sponsor of a special event shall not be liable for unreasonably excessive noise ~~or disturbing noise~~ unless conditions placed upon the sponsor in the special event permit are violated.

Section 8. That Section 26-199 is hereby added to the Code of Ordinances as follows:

Sec. 26-199 Temporary Waiver.

A. Any person who owns or operates a sound source, or intends or desires to operate or maintain a sound source, for one of the following purposes may apply for a temporary waiver

from the City Commission:

1. Private or public celebrations in accordance with the requirements of City Code of Ordinances section 6-86;

2. Nighttime Construction projects; or

3. Homeowner Construction projects.

B. Applications for a permit for a temporary waiver shall supply information including, but not limited to:

1. The nature and location of the Noise source for which such application is made;

2. The reason for which the permit for temporary waiver is requested, including the hardship, if any, that will result to the applicant or the public if the permit for temporary waiver is not granted;

3. The nature and intensity of Noise that will occur during the period of the temporary waiver;

4. A description of interim Noise control measures to be taken by the applicant to minimize Noise and the impacts occurring therefrom; and

5. The name, address and means of contacting a responsible party during the hours of operation for which the permit for temporary waiver is issued.

C. The City Commission may charge the applicant a fee established by Resolution of the City Commission to cover

expenses resulting from the processing of the permit of temporary waiver application.

D. In making the determination on granting a temporary waiver, the City Commission shall consider:

1. The character and degree of injury to, or interference with, the health and welfare of the reasonable use of adjacent property which is caused or threatened to be caused by the sound to result from the permit for temporary waiver ;

2. The social and economic value of the activity for which the temporary waiver is sought; and

3. The ability of the applicant to apply best practical Noise control measures.

E. The permit of temporary waiver shall enumerate the conditions of the waiver, including but not limited to:

1. Specific location, dates and times for which the temporary waiver is valid;

2. Sound level limits which shall not be exceeded at the nearest affected residential property;

3. The use of noise control measures to minimize Noise impacts on adjacent property.

F. A temporary waiver may be revoked by the City Manager or his designee and the issuance of future waivers withheld, if there is:

1. Violation of one or more conditions of the temporary waiver;

2. Material misrepresentation of fact in the temporary waiver application; or,

3. Material change in any of the circumstances relied upon by the City Commission in granting the temporary waiver.

G. Notice of the City Commission's proposed action on an application for a permit for a temporary shall be mailed prior to the meeting at which the matter is to be considered to all property owners located within a 100-foot radius of the proposed waiver. Notice of such proposed action also shall be published in a newspaper of general circulation in the city at least five days prior to the date of the City Commission decision. The notice shall identify a contact person and phone number for complaints. The applicant shall pay for the newspaper advertisement.

Section 9. If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this

Ordinance.

Section 10. All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 11: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2014.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2014.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2014.

Filed with the Clerk _____, 2014.

Mayor Craig Cates _____
Vice Mayor Mark Rossi _____
Commissioner Teri Johnston _____
Commissioner Clayton Lopez _____
Commissioner Billy Wardlow _____
Commissioner Jimmy Weekley _____
Commissioner Tony Yaniz _____

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK