

COLUMBIA COUNTY BOARD OF COUNTY COMMISSIONERS
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COLUMBIA COUNTY SCHOOL BOARD ADMINISTRATIVE COMPLEX
372 WEST DUVAL STREET
LAKE CITY, FLORIDA 32055

AGENDA ADDITION

DECEMBER 21, 2017

5:30 P.M.

Discussion and Action Item

Commissioner Rusty DePratter

- (1) Noise Ordinance

LEGAL GUIDE

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Written by attorney Frederick Laurence Koberlein, Jr. | Sep 13, 2014
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Noise Ordinances of Cities and Counties in Florida

[Neighbor law \(/topics/neighbor-law/advice\)](#)

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Local govts. are now adopting noise ordinances to regulate loud noises. During 2012, Florida's state law was struck down as unconstitutional. Local govts. are adopting local ordinances which usually take into consideration the FL Supreme Court's reasoning, but the ordinances still present issues.

01

Measuring Noise Levels

Two common methods of measuring noise levels are by: (1) subjective (nuisance) measurements; and (2) performance based measurements. Subjective/nuisance measurement based 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 Florida Supreme Court did provide guidance in this area when it decided *State v. Catalano*, during 2012 and, therefore, most ordinances passed after the Florida Supreme Court's ruling should withstand a constitutional attack to the subjective component. The performance measurement 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 measurement based codes contain very specific guidelines for

enforcement. They usually also contain a table which will state the allowable decibel levels and mention the use of decibel meter readers by enforcement officers.

02

Defining the Noises

Noises which classify as disturbances are regulated by the respective local governments noise ordinances. For example, often a noise disturbance is sound that meets any of these three criteria: (1) Disturbs a reasonable person of normal sensitivities; (2) Exceeds the sound level limit set forth in the ordinance, as measured by a sound level meter; and (3) Is plainly audible, which is defined as noise that can be heard a minimum of 200 feet from the property line of the source of the noise - This type of noise includes amplified music, musical instruments, televisions, radios and non-amplified human voices ("yelling, shouting, whistling, hooting or generally creating a racket"). Exemptions are often made for special events and permitting processes are written in the ordinance or the ordinance refers the reader to an area where permits are covered.

03

Penalties for Violations

Penalties vary but may not exceed \$500/offense. The most often seen penalties are: 1st OFFENSE: Warning Notice, in effect for 365 days, no fine. 2nd OFFENSE: Within 365 days of the Warning Notice, issue a Civil Citation with a \$250 fine. 3rd OFFENSE: Within 365 days of the first Civil Citation, issues a Civil Citation with a \$500 fine 4th OFFENSE: Within 365 days of the second Civil Citation, issue a Civil Citation with a mandatory court appearance, and a fine to be determined up to \$500

Additional resources provided by the author

Koberlein Law Offices has been asked to write noise ordinances for local governments and has spent considerable time researching the legal history concerning the constitutional issues on both sides (enforcing and defending) noise ordinances. Sample ordinances can be viewed by clicking

on the links below. "Enforcing Noise Ordinances in Florida" by Patrick Dooley was a contributing source.

Manatee County Noise Ordinance (<http://goo.gl/hdPNe1>)

City of Williston Noise Ordinance (<http://goo.gl/dDqqTO>)

Koberlein Law Offices, PLLC Ordinance violations
(<http://www.flalegalhelp.com/index.php/practice-areas/criminal-area>)

Koberlein Law Offices, PLLC City & County Govt. Law
(<http://www.flalegalhelp.com/index.php/practice-areas/local-government-area>)

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LEE COUNTY NOISE ORDINANCE

ARTICLE II. NOISE

Sec. 12-31. Purpose, statutory authority, and name of Article.

The purpose of this Article is to regulate, restrict and, where necessary, prohibit or abate the production and emission of amplified speech, music and other noises and sounds in the unincorporated areas of the county that tend to annoy, disturb, or frighten citizens. This Article is adopted pursuant to the authority contained in G.S. 153A-133, G.S. 153A-123 and G.S. 14-4 and shall be known as the Lee County Noise Control Ordinance.

Sec. 12-32. Definitions.

In addition to the common meaning of words, the following definitions shall be used in interpreting this Article.

- (a) *Construction.* On-site erection, fabrication, installation, alteration, demolition or removal of any structure, facility or addition thereto, including all related activities such as clearing of land, earth moving, blasting and landscaping. "Construction" also shall include building or maintenance of public streets, roads, highways, and public vehicular areas.
- (b) *Commercial sport shooting range.* An area or structure designed for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting, which is operated as a business venture and, where required by law, is properly licensed and permitted.
- (c) *Daytime hours.* From 7:00 a.m. until 10:00 p.m., local time.
- (d) *Emergency work.* Work made necessary to restore property to a safe condition; work required to protect, provide or prevent persons or property from danger or potential danger; or work by private or public utilities when restoring utility service.
- (e) *Loudspeaker.* A device actuated by an electrical signal that produces sounds controlled by the electric signal. The sounds produced are usually a reproduction of speech or music or other sound encoded in the electrical signal.
- (f) *Nighttime hours.* After 10:00 p.m. and until before 7:00 a.m., local time.
- (g) *Person.* Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political

subdivision or agency thereof or any legal successor, representative, agent or agency of the foregoing.

(h) *Property boundary line.* An imaginary line along the ground surface, and its vertical extension, separating the real property owned or occupied by one person from that owned or occupied by another person, including real property divisions within buildings. Public rights-of-way and easements that divide the property are not property boundary lines.

(i) *Residential area.* For the purpose of this Article, "residential area" means any tract or parcel of land zoned for residential use or actually used for sleeping purposes, including, but not limited to, land on which is located private homes, apartments and other multi-family structures, hospitals, nursing homes, rest homes, assisted living centers, hotels, motels, dormitories, or campgrounds, and shall further include any tract or parcel of land on which are located any school, library, or church which is open and operating.

(j) *Sound-magnifying device.* Any device or machine for the magnification of a human voice, music or any other sound. "Sound-magnifying device" shall not include emergency warning devices on police, fire, ambulance or other emergency vehicles.

Sec. 12-33. Prohibited noises and sounds generally.

It shall be unlawful in the unincorporated areas of the county for any person to produce and cause or allow to cross the property boundary line of his property:

(a) any unreasonably loud, disturbing or raucous noise or sound that tends to seriously annoy, disturb, or frighten a reasonable individual of normal sensitivities, or

(b) noise or sound of such character, intensity or duration as to be detrimental to the health of any individual or which disturbs the quiet comfort or repose of a reasonable individual of normal sensitivities, or which interferes with the useful enjoyment of property.

Sec. 12-34. Enumerated prohibited and unlawful noises and sounds.

In addition to any other noises and sounds prohibited by this Article, the following acts are specifically declared to produce unreasonably loud, disturbing, or raucous sound or noise that seriously annoys, disturbs or frightens a reasonable individual of normal sensitivities, or to be detrimental to the health of any individual, or disturbs the quiet comfort or repose or useful enjoyment of property. Causing or allowing these sounds or noises to cross over the property boundary line of the property from which the sound or noise emanates is prohibited and unlawful. This enumeration shall not be deemed to inclusive of all the noises or sounds that violate this Article.

(a) Playing, operating, or permitting to be played or operated, any radio, television set, musical instrument, or a tape recorder, cassette player, compact disc player, digital video recording or other machine or device for the reproducing of sound during in or on:

(1) Any public property including any public street, highway, building, sidewalk, park, thoroughfare, or public or private parking; or

(2) Any motor vehicle on a public street, highway or public space, or within the motor vehicle area of any public or private parking lot or parks;

if, at the same time the noise or sound is generated, it is audible at a distance of 30 feet from the machine or device reproducing the sound.

(b) Using or operating outdoors for any purpose any loudspeaker, loudspeaker system, noise amplification device, or similar device within any residential area, except for noncommercial public speaking, public assembly, or other activity for which a permit has been issued by appropriate authority.

(c) Offering for sale, selling, or advertising any item by shouting or outcry within any residential area, except when a permit has been issued by appropriate authority.

(d) Owning, possessing, or harboring in a residential area any dog, bird, or other animal which howls, barks, cries, meows, squawks, or makes other loud sounds or noises continuously for a period of ten minutes or more, or intermittently for one-half hour or more, at any time. It shall not be a violation of this section if, at the time the animal is making the illegal noise, a person is trespassing or threatening to trespass upon private property in or upon which the animal is situated or has teased or provoked the animal. Any resident, owner, occupant, or tenant of property upon which the animal is situated shall be deemed a person in charge or otherwise exercising control over such animal. This provision shall not apply to public zoos or private animal attractions operated for profit to which the public has general admission and for which a permit has been issued by appropriate authority.

(e) Operating or permitting the operation of any mechanically powered saw, drill grinder, lawn or garden tool, or similar tool in any residential area in the nighttime.

Sec. 12-35. Exceptions.

(a) The prohibitions established in this Article shall not apply to the following sources of sound:

(1) Emergency warning devices or safety signals;

(2) Lawnmowers, agricultural equipment, and landscape maintenance equipment when operated in the daytime with all the manufacturer's standard mufflers and noise-reducing equipment in use and in reasonable operating condition;

(3) Equipment being used for construction, provided that all equipment is operated in accordance with manufacturer's specifications and with all standard equipment manufacturer's mufflers and noise-reducing equipment in use and in proper operating condition.

(4) Parades, fairs, circuses, other similar public entertainment events, sporting events, or sporting activities taking place in areas set aside for such activities, or any activities normally associated with any of these activities;

(5) Bells, chimes and similar devices which operate for a duration of no longer than five minutes in any hour;

(6) Emergency work.

(7) The provision of all government services, including but not limited to, noises produced by solid waste collection vehicles, fire, law enforcement, ambulance, rescue or other emergency vehicles, while such vehicles are engaged in their proper functions.

(8) Emission of sound from any source or sources on public rights-of-way, except for those limited by Section 14-34(a) herein.

(9) Noise from trains and associated railroad rolling stock when operated in proper repair and manner.

(10) All noises coming from the normal operations of properly equipped aircraft, not including scale model aircraft.

(11) Normal operation of a commercial sport shooting range when operated with a permit from appropriate authority.

(12) Any sounds associated with bona fide farm or agricultural activities including seasonal activities such as harvesting at the end of the growing season or planting during planting season.

(13) Non-amplified crowd noises resulting from activities and events sponsored by school, governmental, or community groups.

(14) Music produced by school bands while practicing or performing on school property.

(b) In any proceeding pursuant to this Article, if an exception is asserted in defense of an alleged violation, the person making the assertion shall have the burden of persuasion that the exception applies and that the terms of the exception have been met.

Sec. 12-36. Creating public disturbance prohibited.

(a) The gathering of any group on the sidewalks, streets, or public places within the county for the purpose of creating, or which creates, mechanical, vocal or other sound which is of such intensity or nature to interfere with the rights of peaceful occupation of the property owners in the adjacent areas is unlawful. Any person who participates in, leads, directs or encourages such actions shall be in violation of this section.

(b) Nothing in this section shall prevent the orderly expression of spectators at regularly organized sporting events or the peaceful assembly of any group for orderly expression or communication between those assembled.

Sec. 12-37. Enforcement responsibility.

The Sheriff of Lee County shall have primary enforcement responsibility for violations of this Article. Any Lee County Animal Control Officer shall have authority to enforce sections of this Article relating to unlawful noise or sounds created by animals only through warnings, assessment of a civil penalty and initiation of equitable remedies.

Sec. 12-38. Authorized enforcement actions.

(a) No person violating this Article shall be charged either civilly or criminally or be named a defendant in a civil action seeking an equitable remedy without first being warned by a law enforcement officer or animal control officer that his action constitutes a violation of this Article and given an opportunity to bring his conduct into compliance with this Article.

(b) When a violator, after warning, fails to immediately bring his conduct into compliance with this Article, one or more of the following enforcement actions may be taken.

(1) Imposition of a civil penalty.

a. Any person violating any provision of this Article shall be subject to a civil penalty in the amount of \$200.00. Any subsequent violation within a 12-month period of a first violation shall subject the violator to a civil penalty of \$400.00 and each subsequent violation after the second, regardless of when it occurs, subjects the violator to a penalty of \$500.00. Separate offenses shall be deemed committed on each day during or on which a violation occurs or continues.

b. Imposition of a civil penalty shall be by issuance of a civil citation or notice of violation by a Lee County deputy sheriff or Lee County animal control officer which shall state upon its face, as a minimum, the nature of the violation with a citation to the provision of this Article alleged to be violated, the amount of the civil penalty, that the civil penalty shall be paid in person or via United States Mail to the Lee County Revenue Department at 106 Hillcrest Drive within five business days from the date the citation or notice of violation is issued, and notify the alleged violator that failure to pay the civil penalty within the prescribed time shall subject the alleged violator to a civil action in the nature of a collection of a debt to recover the stated penalty and the cost of the action as taxed by the court.

(2) Issuance of a criminal citation or arrest.

a. Any person who violates this Article, shall be guilty of a Class 2 misdemeanor and shall be punished by a fine of not more than \$200.00 for a first offense, \$400.00 for a second offense committed within 12 months of a first offense conviction and \$500.00 for the third or subsequent conviction regardless of when the third or subsequent conviction is obtained. Imprisonment for up to 30 days is an additional authorized punishment for any violation. Separate offenses shall be deemed committed on each day during or on which a violation occurs or continues.

b. A criminal charge shall be initiated by issuance of a criminal citation only by the Lee County Sheriff or deputy sheriff, except that the Sheriff or deputy sheriff may arrest the alleged violator when he refuses to provide his name and address and any proof thereof as may be reasonably available to him; or the alleged violator refuses to promptly cease such illegal activity after being issued a civil or criminal citation.

(3) Equitable and injunctive remedies.

a. Lee County, the Lee County Sheriff, a Lee County deputy sheriff or a Lee County animal control officer may seek equitable remedies from the Superior

Court of Lee County for violations of this Article through a civil action in the Superior Court of Lee County.

b. The institution of a civil action for equitable relief shall not relieve any party to such proceeding from any civil or criminal penalty prescribed for violations of this Article.

Sec. 12-39. Other remedies.

No provision of this Article shall be construed to impair any common law or statutory cause of action or legal remedy of any person for injury or damage to person or property, arising from violation of this ordinance or arising from sound crossing a property boundary that does not violate this ordinance.

Sec. 12-40. Severability.

It is hereby declared to be the intention of the Board of County Commissioners that the sections, paragraphs, sentences, clauses and phrases of this Article are severable and if any section, subsection, sentence, or clause of this Article is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of the remaining portions of this Article. It is hereby declared that this Article would have been passed, and each section, subsection, sentence, or clause hereof, irrespective of the fact that any one or more sections, subsections, sentences, or clauses might be adjudged to be unconstitutional or for any other reason invalid.

Adopted by majority vote, a quorum being present, this the 4th day of October 2010.

LEE COUNTY BOARD OF COMMISSIONERS

By: _____
Richard B. Hayes, Chairman

ATTEST:

Gaynell M. Lee, Clerk

ORDINANCE NO. 13-05

AN ORDINANCE OF MANATEE COUNTY, FLORIDA, REGULATING AND PROHIBITING THE EMISSION OF HARMFUL NOISE; AMENDING AND RESTATING ARTICLE II OF CHAPTER 2-21 OF THE MANATEE COUNTY CODE; DECLARING SAID NOISES TO BE DETRIMENTAL TO THE PUBLIC HEALTH, COMFORT, CONVENIENCE, SAFETY, AND WELFARE OF THE RESIDENTS OF MANATEE COUNTY; ESTABLISHING AND DEFINING CERTAIN TERMS; ESTABLISHING AND PROVIDING FOR CERTAIN EXCEPTIONS; PROHIBITING THE MAKING, CAUSING OR ALLOWING OF HARMFUL NOISE WHICH CAUSE NOISE DISTURBANCES OR EXCEED CERTAIN SOUND LEVELS; PROVIDING FOR TECHNIQUES TO BE USED IN MEASURING LEVELS OF HARMFUL NOISE AND THE ESTABLISHMENT OF LIMITS; PROVIDING FOR PENALTIES, FINES OR IMPRISONMENT; PROVIDING FOR ADDITIONAL CIVIL REMEDIES AND CITATIONS; PROVIDING FOR MAXIMUM CIVIL PENALTIES FOR CIVIL INFRACTIONS; PROVIDING FOR THE REPEAL OF ORDINANCE 08-12; PROVIDING FOR SPECIAL PERMITS; PROVIDING FOR APPEALS OF SPECIAL PERMITS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the making and creation of excessive and unusually loud noises within Manatee County, Florida, is a condition which has existed for some time and which exists despite enforcement efforts; and

WHEREAS, these noises and the amount, intensity, duration and vibration of said noises is increasing within the area of this County as population, industry and tourism grows; and

WHEREAS, the residents of Manatee County have a right to an environment free from excessive noise including the vibration and disturbances from low frequency noise; and

WHEREAS, the making and creation of these noises may be prolonged, unusual and unnatural in their time, place and effect upon individuals, and are a detriment to the public health, comfort, convenience, safety, welfare and prosperity of the residents of Manatee County; and

WHEREAS, as a matter of legislative determination and public policy, the Board of County Commissioners finds it in the public interest for the provisions, prohibitions and penalties hereinafter contained and enacted; and

WHEREAS, it is further declared that these provisions, prohibitions and penalties are in pursuance of and for the purpose of securing and promoting the public health, comfort, safety, and welfare of the inhabitants of Manatee County; and

WHEREAS, it is the intent of this Ordinance to prohibit the use or operation of any radio receiving set, “boom box,” musical instrument, car radio, television, phonograph, tape or compact disc player, loudspeaker or any other device used for the production or reproduction of sound from whatever source in such manner as to cause a noise disturbance; and

WHEREAS, noise emanating from stationary and moving vehicles is detrimental to the health, safety and welfare of residents of and visitors to Manatee County and such noise is subject to regulation under this Ordinance; and

WHEREAS, it is the intent of this Ordinance that it shall work harmoniously with existing ordinances and state statutes regulating noise emissions and shall be an additional regulation to those pre-existing ordinances and statutes; and

WHEREAS, it is the intent of this Ordinance to repeal prior Ordinance No. 08-12 and replace it with this Ordinance containing several new substantive provisions included as a result of the experience of enforcing the current Ordinance; and

WHEREAS, it is not the intent of this Ordinance to interfere with the individual rights to freedom of speech or religion; and

WHEREAS, professional architectural, environmental and acoustical consultants have provided Manatee County a written review with recommendations for revisions to this Ordinance

and Manatee County has incorporated many of these recommendations herein in an effort to improve the regulation and enforcement of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA:

Section 1. Amendment to Code of Laws. The Manatee County Code of Laws is hereby amended to substitute in its entirety the following as Article II of Chapter 2-21:

ARTICLE II. NOISE

Sec. 2-21-31. Terminology; Definitions. All terminology used in this article not defined below shall be defined according to applicable publications of the American National Standards Institute (ANSI) or the American Society for Testing and Materials (ASTM) or their successor bodies.

A-weighted sound level (dBA): The sound pressure level in decibels as measured using A-weighting network on a sound level meter that meets the standards set forth in ANSI Standard S.1.4-1983 (or more recent version). The level so read is designated "dBA."

Ambient Noise: The surrounding or steady background noise in a particular location as distinct from the specific noise being measured.

C-weighted sound level (dBC): The sound pressure level in decibels measured using the C-weighting network on a sound level meter that meets the standards set forth in ANSI Standard S1.4-1983 (or more recent version). The level so read is designated "dBC."

Commercial area: Land used primarily for the sale of merchandise or goods, or for the performances of a service, or for office or clerical work.

Construction activity: Any site preparation, assembly, erection, substantial repair, alteration, or improvement of realty, whether publicly or privately owned, and whether above ground or below ground.

Decibel (dB): The practical unit of measurement for sound pressure level; the number of decibels of a measured sound is equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the sound pressure of the measured sound to the sound pressure of a standard sound (twenty [20] micropascals); abbreviated "dB."

Emergency: Any occurrence or set of circumstances involving actual or imminent physical trauma to human beings or living creatures or property damage which necessitates immediate action.

Emergency work: Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency, including work necessary to restore property to a safe condition following an emergency.

Industrial area: Land use which is primarily for manufacturing, processing or an airport.

Multifamily dwellings: A building designed or used exclusively for residential occupancy by two (2) or more families.

Noise: Any sound which annoys or disturbs humans or causes or tends to cause an adverse physical or psychological effect on humans. "Noise" includes low frequency sounds caused by amplified bass music that can induce vibration in building structures or human beings.

Noise disturbance: Sound which:

- (a) is or may be harmful or injurious to the health or welfare of a person with normal sensitivities; or
- (b) the presence of noise in an excessive or disturbing amount or of such duration, wave frequency or intensity as to be injurious to human life, health; or
- (c) is plainly audible from a distance of 25 feet or more.

Park land: Land that is used primarily for public recreational activities.

Person: Any individual, natural person, public or private corporation, firm, association, joint venture, partnership, or any other entity whatsoever or any combination of such, jointly and severally.

Public right-of-way: Any street, avenue, boulevard, highway, sidewalk or alley or similar place normally accessible to the public which is owned or controlled by a governmental entity.

Public space: Any real property or structure thereon normally accessible to the public which is owned or controlled by a governmental entity.

Real property line:

- (a) The imaginary line including its vertical extension that separates one parcel of real property from another; or
- (b) The vertical and horizontal boundaries of a dwelling unit that is one unit in a multi-dwelling-unit building.

Receiving land: Land area neighboring or in the vicinity of a sound source and on or at which the sound emanating from the sound source is audible to the normal human ear.

Residential: Land use that is primarily for living and sleeping or park land or hospitals or schools or nursing homes or the individual plots within a mobile home park assigned by the owner of the park or any land use that is not commercial or industrial.

Short duration and non-repetitive: Any sound with a duration of less than thirty seconds.
Sound: An oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

Sound analyzer: A device for measuring the octave band level of a sound as a function of frequency.

Sound level: The weighted sound pressure level obtained by the use of a metering characteristic and weighting A, B or C as specified in the American National Standards Institute specifications for sound level meters ANSI S1.4-1983, or in successor publications. If the weighting employed is not indicated, the A-weighting shall apply.

The criteria required to properly define the sound level limits include the following:

1. The actual sound level limit with the frequency weighting to be used, such as A-weighting or C-weighting (i.e. 55 dBA, 60 dBC, etc.)
2. The acoustical metric to be used, such as real time measurement using fast/slow time constant, an average sound level (Leq), a maximum sound level (Lmax), etc. or a combination of multiple metrics.
3. The time duration of the measurement (i.e. instantaneous, time average, percentage of time sound level is not to be exceeded, etc.)

Sound level or noise meter: An instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter, and weighting networks used to measure sound pressure levels. The output meter reads sound pressure level when properly calibrated, and the instrument is of type 2 or better, as specified in the American National Standards Institute publication S1.4-1983 or its successor publication.

Sound pressure: The instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by the presence of energy.

Sound pressure level: Twenty (20) times the logarithm to the base ten (10) of the ratio of the RMS sound pressure to the reference pressure of twenty (20) micronewtons per square meter ($20 \times 10^6 \text{N/m}^2$). The sound pressure level is expressed in decibels.

Tone: Any sound which can be distinctly heard as a single pitch or a set of single pitches. For the purposes of measurement, a tone shall exist if the time-average sound pressure level in the one-third octave band of interest exceeds the time-average sound pressure levels in each of the two adjacent one-third octave bands by 15 decibels for the one-third octave bands with center frequencies of 25 Hz to 125 Hz, by 8 dB in the one-third octave bands with center frequencies of

160 Hz to 400 Hz, and by 5 dB for the one-third octave bands with center frequencies of 500 Hz to 10000 Hz.

Sec. 2-21-32. Area of applicability. This article shall be applicable to and embrace the unincorporated areas of the county.

Sec. 2-21-33. Exceptions. The following activities or sources are exempt from the requirements of this article:

- (1) The emission of sound for the purpose of alerting persons to the existence of an emergency or in the performance of emergency work.
- (2) Between the hours of 7:00 a.m. and 11:00 p.m., ceremonial or traditional activities or events, including the sounding of church bells and the normal sounds of organized sporting and cultural events.
- (3) Operation of equipment or conduct of activities normal to residential or agricultural communities as set forth herein:

<i>Description</i>	<i>Hours of Operations</i>
(a) lawn care, soil cultivation, domestic power tools, lawn mowers, maintenance of trees, hedges, gardens, saws and tractors, street sweepers, mosquito fogging, tree trimming and limb chipping and other normal community operations	7:00 a.m. to 10:00 p.m.
(b) operation of equipment for solid waste and recycling collection in or adjacent to residential uses	6:00 a.m. to 6:00 p.m.
(c) operation of equipment for solid waste collection in nonresidential locations	4:00 a.m. to 10:00 p.m.
(4) Operation of manufacturing in areas zoned for such activities and which do not create a noise disturbance on any properties not designated for such activities.	
(5) The usual noises of construction and operation of construction equipment between the hours of 7:00 a.m. to 8:00 p.m.	

- (6) The Usual engine noises of traffic and motor vehicles on the public right-of-way.
- (7) Single-family residential attached unit or multi-family units, with air-conditioning or pool pump equipment when in reasonable mechanical condition operating with the standard noise and vibration control systems typically provided by the manufacturer in a sound level not to exceed 65 dBA or 65 dBC. Air conditioning units are presumed to be in reasonable mechanical condition if the unit meets the noise specifications contained in the Air Conditioning and Refrigeration Institute's ("ARI") Applied Directory of Certified Product Performance Variable Air Volume terminals. See www.aridirectory.org

Sec. 2-21-34. Prohibited acts. The occurrence of the conditions, acts or omissions as described in subsections (1) or (2) of this section shall constitute a violation of this article. Requirements in any one of said subsections stand alone. Measurements described in subsection (2) shall constitute *prima facie* evidence of a violation of this article. However, such measurements are not necessary for enforcement of this article, *i.e.*, neither sound measurements and maximum permissible sound levels as provided in subsection (2) nor any other type of sound measurement are necessary to prove a violation of subsection (1) of this section so long as evidence exists sufficient to establish that the sound constitutes a noise disturbance pursuant to the applicable standard of proof.

- (1) *Noise disturbance.* Notwithstanding any other provision of this article, and in addition thereto, it shall be unlawful for any person to make or continue, or cause or permit to be made or continued, any noise disturbance, as defined in Section 2-21-31.

(a) *Standards.* The standards to be considered in determining whether a violation of subsection (1) of this section exists may include, but shall not be limited to, the following:

1. The volume of the noise.
2. The intensity of the noise.
3. Whether the nature of the noise is usual or unusual.
4. The volume and intensity of the ambient noise, if any.
5. The proximity of the noise to residential sleeping facilities.
6. The nature and zoning of the area from which the noise emanates.

7. The nature and zoning of the receiving land.
8. The time of the day or night the noise occurs.
9. The duration of the noise.
10. Whether the noise is produced by a commercial or noncommercial activity.

(b) *Enforcement.* Enforcement does not depend on any minimum number of standards being met.

(c) *Persons affected.* Persons affected may include residents, passersby, or code enforcement officials or others who may be unreasonably disturbed by excessive noise in the general conduct of their affairs.

(2) *Maximum permissible sound levels.*

(a) *Sound.* No person shall generate or cause to be generated from any source, sound which, when measured at the receiving property or within the boundary of the receiving property from which the complaint originated or where the sound is being generated, exceeds:

1. Sixty (60) dBA or Sixty-five (65) dBC during the hours between 7:00 a.m. and 10:00 p.m.
2. Fifty-five (55) dBA or Sixty (60) dBC during the hours between 10:00 p.m. and 7:00 a.m.
3. Sixty-five (65) dBA or Seventy (70) dBC if the receiving land is a commercial area during the hours between 7:00 a.m. and 10:00 p.m.
4. Eighty (80) dBA or Eighty-five (85) dBC if the receiving land is industrial during the hours between 7:00 a.m. and 10:00 p.m.

(b) *Correction for character of sound.* For any source of sound which emits a continuous tone, the maximum sound level limits set forth in subsection (2)(a) shall be reduced by five (5) dBA. For any source of sound which is of short duration and is nonrepetitive, the maximum sound level limits set forth in subsection (2)(a) shall be increased by five (5) dBA from 7:00 a.m. to 10:00 p.m.

(c) *Correction for ambient noise.* Corrections for ambient noise should be made in accordance with applicable ASTM standards.

(d) *Methods of measurements.*

1. The measurement of sound shall be made with a decibel or a sound level meter operating on the A-weighted scale of any standard design and quality meeting the standards prescribed by the American National Standards Association. The instruments shall be maintained in calibration and good working order. Measurements recorded shall be taken so as to provide a proper representation of the sound source. The microphone used during measurement shall be positioned so as to not to create any unnatural enhancement or diminution of the measured sound. A wind-screen for the microphone should be used when required. Traffic, aircraft, and other background ambient sounds shall not be considered in taking measurements except where such ambient sound interferes with the primary noise being measured.
2. The measurement shall be made within the boundary of the receiving property as appropriate approximately five (5) feet above ground.
3. Acoustical measurements should be made in general conformance with ASTM Standard E1503-06 (or most recent) *Standard Test Method for Conducting Outdoor Sound Measurements Using a Digital Statistical Sound Analysis System* or ANSI Standard S1.13, *Measurement of Sound Pressure Levels in Air*, with regard to addressing issues such as measurement equipment, equipment interferences, calibration of the equipment, and measurement procedures.

Sec. 2-21-35. Enforcement and penalties. Any person or entity violating any of the provisions of this article shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations shall be prosecuted in the name of the State of Florida in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and, upon conviction, shall be punished by a fine not to exceed five hundred dollars (\$500), or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment. Each incident or separate occurrence of an act that violates this article shall be deemed a separate offense.

Sec. 2-21-36. Civil remedies and citations. In addition to the criminal penalties provided in Section 2-21-35, the Board of County Commissioners is authorized to institute any appropriate action or proceeding, including suit for injunctive relief, as may be necessary, in order to prevent or abate violations of this article. Citations may also be issued to enforce this article as provided

in section 2-2-25 of this code except that the civil penalties for violation of Section 2-21-35 shall be as follows:

- (1) First violation: Warning Notice, in effect for 365 days, no fine.
- (2) Second violation: Within 365 days of the Warning Notice, issue a civil citation with a Two hundred fifty dollar (\$250) fine.
- (3) Third violation: Within 365 days of the first civil citation, issue a civil citation with a Five hundred dollar (\$500) fine.
- (4) Fourth violation: Within 365 days of the second civil citation, issue a civil citation with a mandatory court appearance and a fine to be determine up to Five hundred dollars (\$500).

Sec. 2-21-37. Special Permits. Special permits for prospective activities that will exceed the maximum permissible noise levels permitted by this section may be obtained by completed application to the Manatee County Administrator or his designee. Such special permit shall not be unreasonably withheld so long as the prospective activity will not adversely affect the health, safety, and welfare of nearby residents. The administrative determination shall be made within ten (10) business days of application, or the subject activity shall be deemed permitted.

Sec. 2-21-38. Appeals. Any person denied a Special Permit may file an administrative appeal to a Manatee County Hearing Officer in accordance with Sec. 2-2-107 *et seq.* of this code.

Section 2. Severability. If any section, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

Section 3. Repeal. Ordinance 08-12 is hereby repealed upon the effective date of this Ordinance.

Section 4. Codification. The publisher of the County's Code of Laws, the Municipal Code Corporation, is directed to incorporate this article into the Code of Ordinances where indicated and to replace Article II of Chapter 2-21 with this Ordinance.

Section 5. Effective Date. This Ordinance shall take effect immediately upon filing with the Department of State.

PASSED AND DULY ADOPTED, in open session, with a quorum present and voting, this ____ day of _____, 2013.

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

By: _____
Chairperson

Attest: R.B. SHORE
CLERK OF THE CIRCUIT COURT

By: _____
Deputy Clerk