

ORDINANCE NO. 2024-__

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, FLORIDA, AMENDING CHAPTER 48, “NOISE CONTROL,” RELATING TO NOISE REGULATIONS; AMENDING REGULATIONS, DEFINITIONS, AND TESTING PROTOCOLS RELATED TO NOISE RESTRICTIONS; PROVIDING MAXIMUM PERMISSIBLE SOUND LEVELS IN RESIDENTIAL USE CATEGORY; PROVIDING FOR EXEMPTIONS; PROVIDING FOR SPECIAL PERMITS AND LICENSE; PROVIDING FOR PENALTIES; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the Florida Constitution and Laws of Florida authorize the Town of Melbourne Beach to adopt ordinances regulating, restricting, or prohibiting the production or emission of noises that tend to annoy, disturb, or frighten its citizens; and

WHEREAS, the measurement of noise level presents unique challenges, particularly along busy roadways; and

WHEREAS, the Town Commission finds the reliance upon a “reasonable person” standard in cases where it is impractical to perform a noise level reading due to ambient noise levels injects and undue amount of subjectivity into the process of determining noise levels; and

WHEREAS, the Town Commission finds it to be more reasonable and effective to use the ambient noise level as the maximum noise level in circumstances when ambient noise meets or exceeds the maximum noise level allowed by the Code; and

WHEREAS, it is the policy and intent of the Town of Melbourne Beach to protect the health, safety, and welfare of its citizens and to promote an environment free from sound and noise disruptive of peace and good order.

NOW THEREFORE, BE IT ENACTED BY THE TOWN OF MELBOURNE BEACH, FLORIDA:

Section 1. Chapter 48, “Noise Control,” of the Town of Melbourne Beach Code of Ordinances, shall be amended as follows (Note: additions indicated by underscore; deletions indicated by ~~strikethrough~~; and text that shall remain unaltered that is not reproduced here is indicated by ellipses (***)):

Section 2. The findings set forth in the recitals above are adopted and fully incorporated herein as legislative findings of the Town Commission pertaining to this Ordinance.

Section 3. Chapter 48, “Noise Control,” is hereby amended to read as follows:

CHAPTER 48: NOISE CONTROL

§ 48-1. UNUSUAL AND LOUD NOISE PROHIBITED.

~~—(a) It shall be unlawful, for any person, firm or corporation to create or assist in creating any unreasonably loud and disturbing noise in the town. Noise of such character, intensity and duration as to be detrimental to the public health, welfare and peace is prohibited. except as expressly permitted in this article, to make, cause or allow the making of any noise or sound in such a manner as to create a noise disturbance.~~

~~—(b) The following acts, among others, are declared to be loud and disturbing noises in violation of this section, but this enumeration shall not be deemed to be exclusive:~~

~~—(1) The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle, except as a danger signal, so as to create any unreasonably loud or harsh sound or the sounding of such device for an unreasonable period of time, or the use of any gong or siren upon any vehicle, other than police, fire or other emergency vehicle.~~

~~—(2) The playing of any radio (except in a motor vehicle as defined in Section 316.003, Florida Statutes), phonograph, or other musical instrument in a manner or with such volume, particularly during hours between 11:00 p.m. and 7:00 a.m. as to annoy or disturb the quiet, comfort, or repose of any person in any dwelling, hotel or other type of residence.~~

~~—(3) The keeping of any animal or bird which, by causing frequent or long continued noise, shall disturb the comfort and repose of any person in the vicinity.~~

~~—(4) The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in a manner as to create loud grating, grinding, rattling or other noise.~~

~~—(5) The blowing of any steam whistle attached to any stationary boiler or engine, except to give notice of the time to begin or stop work or as a warning of danger.~~

~~—(6) The sounding of any bell or gong (except emergency equipment) attached to any building or premises which disturbs the quiet or repose of persons in the vicinity thereof.~~

~~—(7) The conducting, operating or maintaining of any garage or service station in any residential area so as to cause loud or offensive noises to be emitted therefrom between the hours of 10:00 p.m. and 7:00 a.m. on weekdays or on Sundays.~~

~~—(8) The creation of any excessive noise on any street adjacent to any school, institution of learning, or court while the same are in session, or within 150 feet of any hospital, which unreasonably interferes with the working of those institutions, provided conspicuous signs are displayed in those streets indicating that the area is a school, court or hospital area.~~

~~—(9) The creation of any excessive noise on Sundays on any street adjacent to any church, provided conspicuous signs are displayed in such streets adjacent to churches indicating that the same is a church street.~~

~~—(10) The erection (including excavation), demolition, alteration, or repair in the event that such alteration or repair creates noise of such character, intensity and duration as to be detrimental to public health, welfare, and peace, of any building in a residential or business district other than~~

~~between the hours of 7:00 a.m. and 6:00 p.m., on weekdays, except in the case of urgent necessity in the interest of public safety and then only with a permit from the Building Inspector, which permit may be renewed for a period of three days or less while the emergency continues.~~

~~—(11) The use of any mechanical device operated by compressed air unless the noise created thereby is effectively muffled and reduced.~~

~~—(12) The shouting and crying of peddlers, barkers, hawkers and vendors which disturbs the quiet and peace of the neighborhood.~~

~~—(13) The use of any drum, loud speaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show, or sale or display of merchandise.~~

~~—(14) The use of any mechanical loud speakers or amplifiers on trucks or other moving vehicles for advertising purposes or other purposes except where specific license is received from the Town Commission.~~

~~—(15) The operation of a radio, tape player or other mechanical sound-making device or instrument from a motor vehicle, as defined in Section 316.003, Florida Statutes, on a street or highway by any person operating or occupying said motor vehicle, so that the sound is plainly audible at a distance of 100 feet or more from the motor vehicle or is louder than necessary for the convenient hearing by persons inside the motor vehicle in areas adjoining churches, schools, or hospitals. This provision shall not apply to circumstances as described in Section 316.3045, Florida Statutes.~~

§ 48-2. 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. All terminology used in this article which is not defined below, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

A-weighted sound level means the sound pressure level in decibels as measured on a sound level meter using the A-weighted network. The level so read is designated dBA.

Ambient noise means the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources.

Building line means an imaginary line extending at a ninety-degree angle from the right-of-way to the nearest corner of a building.

Town Manager means the town manager of the Town of Melbourne Beach or the manager's designee.

C-weighted sound level means the sound pressure level in decibels as measured on a sound level meter using the C-weighted network. The level so read is designated dBC.

Decibel means a unit for describing the amplitude of sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micrometers per square meter.

Emergency work means any work performed for the purpose of preventing or alleviating physical trauma or property damage threatened or caused by an existing or eminent peril.

Noise disturbance means any sound which:

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

For purposes of this definition, any sound that exceeds the maximum permissible sound levels set forth in section 48-4 of this article shall constitute a noise disturbance per se. It is the intent and purpose of this definition that sounds that either meet the aforesaid criteria or exceed the sound levels in section 48-4 shall constitute a violation of this article.

Originating property means the property from which any sound originates.

Receiving property means property into which any sound is projected other than the originating property.

Sound level means the weighted sound pressure level obtained by the use of a metering characteristic and weighting A, B, or C as specified in 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.

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

Sound pressure level means twenty (20) times the logarithm to the base ten (10) of the ratio of the RMS sound pressure level to the reference of twenty (20) micronewtons per square meter.

Testing protocol shall be at least two (2) fifteen (15) second readings taken from a receiving property as provided herein. In cases where the city has received a complaint regarding sound levels, the readings shall be taken from the property from which the complaint is made, if known. In cases where the city has received no complaint or where the location of the complainant is not known, the readings shall be taken from the right-of-way adjacent to the nearest developed receiving property to the originating property from approximately the point at which the building line nearest to the originating property intersects the right-of-way.

§ 48-3. MEASUREMENT OF SOUND.

Standards, instrumentation, measurement procedures, and instrumentation maintenance used in the measurement of sound shall be in accordance with ANSI S1.4-1983 or its successor publications. Town personnel that will be taking sound level measurements shall be trained to use sound testing devices.

§ 48-4. MAXIMUM PERMISSIBLE SOUND LEVELS IN RESIDENTIAL USE CATEGORY.

No person shall cause, suffer, allow or permit the operation of any source of sound in such a manner as to create a sound level that exceeds the sound level limits listed in table 1 when measured beyond the originating property's property line. Sound or noise projecting from one zoning district into another zoning district with a different decibel level limit shall not exceed the limits of the zoning district into which the noise is projected when measured from within such receiving zoning district. Sound pressure levels in excess of those established in table 1 shall constitute prima facie evidence that such sound is in violation of this article. The sound shall be measured using the "A" and "C" scale in slow time constant. In circumstances where the ambient noise level is equal to or exceeds the sound pressure levels established in table 1, the ambient noise level shall represent the maximum sound pressure level for purposes of performing the measurement provided for herein.

TABLE 1
MAXIMUM SOUND LEVELS FOR
RESIDENTIAL USE CATEGORY

<u>Use Occupancy Category</u>	<u>Time</u>	<u>Maximum Sound Level Limit—dBA</u>	<u>Maximum Sound Level Limit—dBC</u>
<u>Residential¹</u>	<u>8:00 a.m.—8:00 p.m.</u>	<u>60</u>	<u>65</u>
	<u>8:00 p.m.—8:00 a.m.</u>	<u>55</u>	<u>60</u>

§ 48-5. NOISE LEVEL EXEMPTIONS.

The following uses and activities shall be exempt from this article's noise level regulations except as listed in table 1.

- (1) Air conditioners when functioning in accord with the manufacturers' [specifications], standard mufflers and noise-reducing equipment in use and in proper operating condition according to standards promulgated by the American Refrigeration Institute. The same exception shall apply to lawn mowers and agricultural equipment during daylight hours.
- (2) Non-amplified crowd noises resulting from activities such as those planned by student, governmental or community groups.
- (3) Construction operations for which building permits have been issued, or construction operations not requiring permits due to ownership of the project by an agency of government; providing all equipment is operated in accord with the manufacturers'

¹ The Town's zoning map shall be relied upon for purposes of defining residential use properties.

- specifications and with all standard equipment, mufflers and noise-reducing equipment in use and in proper operating condition.
- (4) Noises of safety signals, warning devices, emergency pressure relief valves and bells and chimes of churches.
 - (5) Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency.
 - (6) Noises resulting from emergency work.
 - (7) Any other noise resulting from activities of a temporary duration permitted by law and for which a permit therefor has been granted by the city in accordance with this article. Regulation of noises emanating from operations under permit shall be according to the conditions and limits stated on the permit and contained in this article.
 - (8) Noises made by persons having obtained a permit to use the streets.
 - (9) All noises coming from the normal operations of aircraft (not including scale model aircraft).
 - (10) Motor vehicles defined in F.S. Ch. 316.
 - (11) All noises generated by the Town and its agents and/or from Town sponsored events.
 - (12) All noises generated during the July 4th holiday.

§ 48-6. OTHER NOISE.

- (a) Some sounds may be such that they are not measurable or may not exceed the limits but they may be excessive, unnatural, prolonged, and unusual and are a detriment to the public health, comfort, convenience, safety, welfare and prosperity of the residents of the Town.
- (b) With the exception of those exemptions provided by state law, noises prohibited by this section are unlawful, notwithstanding the fact that no violation of section 48-4 is involved, and notwithstanding the fact that the activity complained about is exempted in section 48-5.
- (c) Thus, the following acts are declared to be loud, disturbing and unnecessary noises in violation of this article:
 - (1) The sounding of any horn or signaling device on any automobile or other vehicle, except as a danger warning;
 - (2) The creation by means of any signaling device of any unreasonably loud or harsh sound;
 - (3) The sounding of any signaling device for any unnecessary or unreasonable period of time; and the unreasonable use of any signaling device.

§ 48-7. SPECIAL PERMITS FOR RELIEF OF MAXIMUM ALLOWABLE NOISE LEVELS.

- (a) Applications for a special permit for relief from the maximum allowable noise level limits designated in this article may be made in writing to the Town Manager. Any special permit

granted by the Town Manager hereunder must be in writing and shall contain all conditions upon which said special permit shall be effective.

(b) The Town Manager may grant the relief as applied for under the following conditions:

(1) The Town Manager may require the applicant to exhaust all technically reasonable abatement measures before a special permit is issued. These abatement measures shall be selected and installed by the applicant at his/her own risk.

(2) Special permits may be granted for the purpose of entertainment that exceeds the maximum allowable noise levels established in this article under the following conditions:

a. The function must be open to the public (admission may be charged).

b. The function must take place on public property.

c. The special permit will be given for only four (4) hours in one (1) twenty-four-hour day.

d. The function shall be staged between the hours of 8:00 a.m. and 8:00 p.m.

(3) Special permits for non-entertainment special purposes may be issued under any of the following conditions:

a. If the special purpose relates to the operation of a trade or business, that the special purpose not be in the ordinary course of that trade or business; or if the special purpose does not relate to the operation of a trade or business, that the special purpose not be an ordinary event in the affairs of the applicant.

b. If the special purpose is a recurring purpose, that it not recur more often than four (4) times each calendar year.

c. That the special purpose be absolutely necessary to the operation of the applicant's trade or business; or if the special purpose does not relate to the operation of the trade or business, that the special purpose be compatible with the ordinary activities of the neighborhood in which the special purpose is to occur.

d. Except in emergency situations, as determined by the Town Manager, the special permit may be issued only four (4) hours between 8:00 a.m. and 8:00 p.m. on weekdays.

e. Special permits may be issued for no longer than fifteen (15) consecutive days, renewable by further application to the Town Manager.

(4) No special permit shall be issued to permit the use of any loudspeaker or sound-amplifying device on the exterior of any building, which at any time exceeds the sound level limits in table 1, except those used for emergency warnings.

§ 48-8. LICENSE FOR USE OF LOUDSPEAKERS OR PUBLIC ADDRESS SYSTEMS.

- (a) Loudspeakers or public address systems used to produce sound signals from any source for either advertising or other purposes shall not be operated on or over public property and public rights-of-way, unless a license has been issued by the Town Manager. Such systems may be used Monday through Saturday during daylight hours only. No such systems shall be used, except systems used by police officers and/or Town employees acting in an official capacity, systems approved in conjunction with special permits and special events approved by the Town Manager and special uses approved by the Town Commission.
- (b) Favorable recommendation of the police chief is required before issuance of a license. Such a recommendation must be given if the proposed activity will not violate any ordinance and will not endanger the public health and safety.
- (c) No loudspeakers or sound-amplifying devices shall be operated pursuant to this section within the hours of 8:00 p.m. and 8:00 a.m.
- (d) No loudspeakers or sound-amplifying devices shall be allowed to operate pursuant to this section during any hour of the day or night that exceeds the maximum permissible sound levels as described in section 48-4 unless a special permit for relief from the maximum allowable noise level limits established in this article has been approved by the Town Manager.

§ 48-2 9. PENALTIES.

~~Any person, firm, or corporation violating any provision of this chapter shall upon conviction be punished by a fine not to exceed \$200.~~

- (a) Each violation of this article shall carry the following civil penalties:
- (1) First violation within a one hundred eighty-day period, a written warning and notice to cure.
 - (2) Second violation within a one hundred eighty-day period, a citation in the amount of two hundred fifty dollars (\$250.00).
 - (3) Third and subsequent violations within a one hundred eighty-day period, a citation in the amount of five hundred dollars (\$500.00).

In the event that a person contests the citation issued him or her, or if he or she is convicted of the above charge, the court will set the fine in an amount not exceeding the statutory limits plus

any costs the court may impose. The Town may also seek payment of outstanding expenses as restitution.

§§ 48-3 10. – 48-99 RESERVED.

Section 4. Codification. The provisions of this Ordinance shall be included and incorporated into the Code of Ordinances of the Town of Melbourne Beach, as additions or amendments thereto.

Section 5. Severability. Should any word, phrase, sentence, subsection, or section be held by a court of competent jurisdiction to be illegal, void, unenforceable, or unconstitutional, then that word, phrase, sentence, subsection, or section so held shall be severed from this Ordinance and all other words, phrases, sentences, subsections, or sections shall remain in full force and effect.

Section 6. Conflicting Ordinances. All ordinances or part thereof, in conflict herewith are, to the extent of such conflict, repealed.

Section 7. Effective Date. This Ordinance shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED this ____ day of _____, 2024, by the Town Commission of the Town of Melbourne Beach, Florida.

PASSED ON FIRST READING: _____

PASSED ON SECOND READING: _____

TOWN OF MELBOURNE BEACH, FLORIDA

By: _____
ALISON DENNINGTON, Mayor

ATTEST:

(TOWN SEAL)

Amber Brown, Town Clerk