

ORDINANCE NO: 20-06

AN ORDINANCE OF POLK CITY, FLORIDA, AMENDING THE POLK CITY CODE OF ORDINANCES (THE "CITY CODE"); AMENDING ARTICLE II, CHAPTER 34 IN THE CITY CODE TO MODIFY AND SUPPLEMENT THE CITY'S NOISE ORDINANCE; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City previously adopted a noise ordinance in 1991 as Article II, Chapter 34, of the City Code, by Ordinance No. 88-3; and,

WHEREAS, based upon complaints brought to the City Commission by citizens of the City, the City Commission finds that the enforcement procedures within the ordinance must be strengthened; and,

WHEREAS, based upon research of judicial decisions and other jurisdictions' noise ordinances issued or approved since 1991, the City Commission finds that the substantive provisions of the noise ordinance must be modified; and,

WHEREAS, according to citizen testimony, there are sources of sound pollution and noise that has created or imminently threatens to create conditions that may severely affect the public health, safety, welfare and security of the citizens, residents and visitors of Polk City, Florida; and,

WHEREAS, this Ordinance is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the citizens of the City through the reduction, control, and prevention of loud, raucous and unnecessary noise which unreasonably disturbs, injures, or endangers the health, comfort, repose, peace or safety of people within the community; and,

WHEREAS, loud and raucous noise degrades the environment of the City and the City has a substantial, and in some cases, compelling interest in controlling such noise.

WHEREAS, loud and raucous noise degrades the environment to a degree that is harmful to the health, welfare and safety of its inhabitants and visitors; interferes with the comfortable enjoyment of life and property; interferes with the well-being, tranquility, and privacy of the home; and both causes and aggravates health problems.

WHEREAS, individuals are not required to welcome unwanted noise into their homes and there simply is no right to force unwanted noise into the home of

an unwilling listener and there is a compelling interest in prohibiting such noise on a content neutral basis; and,

WHEREAS, effective control and elimination of loud and raucous noise is essential to the health and welfare of the City's residents and visitors, and to the conduct of the normal pursuits of life, including sleep, work, communication, and recreation; and,

WHEREAS, a substantial body of science and technology exists by which excessive noise may be substantially abated; and,

WHEREAS, to implement these powers, the City deemed it necessary and warranted to adopt an emergency ordinance ("Ordinance No. 20-05") to declare and use its home rule powers and other supplemental authority to declare emergencies.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF POLK CITY, FLORIDA:

SECTION 1. LEGISLATIVE FINDINGS. The above recitals represent the legislative findings of Polk City, Florida, relative to the provisions of this Ordinance and are incorporated herein by reference.

SECTION 2. AMENDMENTS TO ARTICLE II, CHAPTER 34, CITY CODE.. Article II, Chapter 34 of the Code of Ordinances, Polk City, Florida, is hereby amended to read as follows:

ARTICLE II. - NOISE

Sec. 34-31. - Title. ~~Loud and raucous noise prohibited; defined.~~

~~This division shall be known and may be cited as the Polk City Noise Control Ordinance. It shall be unlawful for any person within the City to willfully make or continue, or cause to be made or continued, any loud and raucous noise, which term means any sound which, because of its volume level, duration and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities within the limits of the City. Such term includes the kinds of noise generated by the activities enumerated in section 34-32, except as provided in section 34-33. Such term shall be limited to loud and raucous noise heard upon the public streets, in any public park, school or public building or, the grounds thereof, while in use, in any church or hospital, or the grounds thereof, while in use, upon any parking lot open to members of the public as invitees or licensees or in any occupied residential unit, or the grounds thereof, which is not the source of the noise and from a location not less than 50 feet from the source of the noise, as measured in a straight line from the radio, loudspeaker, motor, horn or other noise source.~~

Sec. 34-32. - Findings of fact. Acts declared nuisances.

~~The foregoing findings are incorporated herein by reference and made a part hereof. The following acts, as limited by section 34-31 and subject to the exceptions provided in section 34-33, are declared to be public nuisances in violation of section 34-31:~~

- (1) ~~Horns, signaling devices, etc.~~ The sounding of any horn, whistle or other audible signaling device so as to create a loud and raucous noise.
- (2) ~~Radios, amplifiers, phonographs, etc.~~ The using, operating or permitting to be played, used or operated, of any radio, amplifier, musical instrument, phonograph or other device for the producing or reproducing of sound in such manner as to cause loud and raucous noise.
- (3) ~~Sound trucks.~~ An amplifier or loudspeaker in, upon or attached to a sound truck or other device for amplifying sound shall not be operated, or permitted to be operated, within the City for advertising purposes or to attract the attention of the public.
- (4) ~~Yelling, shouting, whistling or singing.~~ Yelling, shouting, whistling or singing, at any time or place, so as to create a loud and raucous noise between the hours of 10:00 p.m. and 7:00 a.m. on any day.
- (5) ~~Animals or birds.~~ The keeping of any animal or bird which habitually causes a loud and raucous noise.
- (6) ~~Defects in vehicles or loads.~~ The use of any motor vehicle so out of repair, so loaded or in such a manner as to create a loud, grating, grinding, rattling or other loud and raucous noise, or which is not equipped with a muffler in good working order and in constant operation so as to prevent loud and raucous noise.
- (7) ~~Schools, public buildings, churches and hospitals.~~ The creation of any loud and raucous noise heard within any school, public building, church or hospital, or the grounds thereof, while in use, which interferes with the workings of such institution, or which disturbs or annoys patients in the hospital.
- (8) ~~Noises to attract attention.~~ The use of any drum or other instrument or device to create a loud and raucous noise.

Sec. 34-33. - Authority. Exceptions.

This division is enacted under the Home Rule Power of Polk City, specifically Section 166.041, Florida Statutes, and pursuant to Article II, Section 7, Florida Constitution, which provides that adequate provision shall be made by law for the abatement of excessive and unnecessary noise. The term "loud and raucous noise" shall not include noise or sound generated by the following:

- (1) ~~Cries for emergency assistance and warning calls.~~
- (2) ~~Radios, sirens, horns and bells on police, fire and other emergency response vehicles.~~
- (3) ~~Parades, fireworks displays and other special events for which a permit has been obtained from the City, within such hours as may be imposed as a condition for the issuance of the permit.~~
- (4) ~~Activities on or in municipal and school athletic facilities, and on or in publicly owned property and facilities, provided that such activities have been authorized by the owner of such property or facilities or its agent.~~
- (5) ~~Fire alarms and burglar alarms prior to the giving of notice and a reasonable opportunity for the owner or tenant in possession of the premises served by any such alarm to turn off the alarm.~~
- (6) ~~Religious worship activities, including, but not limited to, bells and organs.~~
- (7) ~~Locomotives and other railroad equipment and aircraft.~~

Sec. 34-34. - Definitions.

As used in this Article, the following terms shall have the following meanings:

- (1) Noise disturbance shall mean any sound which is:
 - (a) Of such duration, volume, or intensity as to be injurious to human or animal life, or property;
 - (b) Of such duration, volume, or intensity as to unreasonably interfere with the comfortable enjoyment of life, property, or the conduct of business;
 - (c) Of such duration, volume, or intensity as to alarm, disturb, or annoy reasonable people; or
 - (d) Unreasonably loud, raucous, jarring, disturbing, unseemly, or a nuisance.
- (2) Amplified shall mean increased in volume or intensity by means of an electrical or mechanical device.
- (3) Motorized vehicle means any transportation vehicle that is propelled, other than by human or animal power, on land. This includes, but is not limited to, motorcycles, ATVs, go-karts, automobiles, and trucks.

Sec. 34-35. Prohibition of noise disturbance; Penalties.

No person or business may make, continue, permit, or cause to be made or continued, any noise disturbance as defined in this Article. Any person violating any of the provisions of this section or of this Article shall be punished by (1) a fine not to exceed \$500.00, (2) imprisonment in the county jail for a period not to exceed 60 days, (3) both such fine and imprisonment in the discretion of the court having jurisdiction over the cause, or (4) administrative fines levied by an appropriate municipal authority under F.S. Chapter 162. Factors that shall be considered in determining whether a noise disturbance in violation of this division has occurred, shall consist of, but may not necessarily be limited to, the following:

- (a) The duration, volume, or intensity of the noise;
- (b) The nature of the area and the land use district from which the sound emanates in relation to the area where it is perceived;
- (c) The time of day or night the noise occurs; and/or
- (d) Whether the noise is recurrent, intermittent, or constant.

Sec. 34-36. - Enforcement.

(a) The city's code enforcement officers, the Polk County Sheriff's Office and any other person authorized to enforce city ordinances may enforce the provisions of this Article.

(b) When a county sheriff's office law-enforcement officer has probable cause to believe that a violation of this section has occurred, the law enforcement officer may issue a warning or issue a citation to the property owner, the one responsible for creating the disturbance, or both. In cases where a county sheriff's office law enforcement officer has already issued a warning for the same conduct by the same individual or property owner complained of, the officer may issue a citation. The officer does not have to personally observe a violation to issue a warning or citation.

(c) If the violation is not abated within a reasonable time, or if the violation recurs within ninety (90) days of the issuance of the warning, the responsible party or parties may be cited for the violation of this section. Issuance of a citation or warning to an adult member of the household or business where the violation occurred may be deemed notice to all members of the household or business thereby rendering them responsible for the noise.

(d) Where there has been a conviction for violating this section, regardless of whether or not adjudication was withheld, subsequent violations based on the same activity that resulted in

the noise disturbance may result in a citation being issued for the repeat violation. The officer is under no obligation to warn the violator of this section prior to issuing the citation.

(e) A citation may state the date and time of issuance, name and address of the person or entity in violation, date of violation, section of the ordinance, or the respective amendments thereto, violated, nature of the violation, name of the officer issuing the citation, and the date, time, and location the violator shall appear in county court.

(f) Any enforcement action or legal remedy available under controlling state law, including, but not limited to, prosecution as a misdemeanor with a fine not exceeding five hundred dollars (\$500.00) or by imprisonment for a term not exceeding sixty (60) days or by both fine and imprisonment, may be imposed as a penalty.

(g) When enforced by a code enforcement officer, the enforcement provisions and procedures contained in the Polk City Code Enforcement Special Magistrate Ordinance, as may be amended, are incorporated herein by reference and will apply.

(h) Nothing contained herein shall prevent the city from taking such other lawful action in law and equity as may be necessary to remedy any violation of any part of this division, including without limitations:

(1) Pursuit of injunctive and/or declaratory relief in a court of competent jurisdiction; and

(2) Utilizing any other action or enforcement method permitted by law.

Sec. 34-37. - Specific prohibitions.

The following specified acts and circumstances are hereby declared to constitute a prohibited noise disturbance in violation of this Article; provided however, such enumeration is not and shall not be deemed to be exclusive; provided further that all other acts and circumstances meeting the definition of noise disturbance are likewise declared to be in violation of this Article.

(a) *Radios, televisions, musical instruments and similar devices, and amplified human voice.* Playing or permitting the playing of any radio, television, audio system, musical instrument or similar device, or amplifying the human voice, sound or music, to such a volume as to be unreasonably loud, raucous, jarring, unseemly or disturbing to people within the area of audibility.

(b) *Barking dogs.* Allowing a dog to bark, howl, or whine continuously between the hours of 9:00 p.m. and 6:00 a.m. until such noise rises to the level of a noise disturbance under section 34-34 of this Article. Any person or entity warned or cited for a violation under this specific subsection shall be subject to the conditions, procedures, penalties, and exemptions found in the Polk County Animal Control and Animal Services Ordinance and its amendments. The sheriff's office may defer enforcement against the owner of the animal to animal control in accordance with the Polk County Animal Control and Animal Services Ordinance, and its amendments, if the law enforcement officer is unable to personally observe the noise disturbance being created by the dog.

(c) *Motorized vehicles.* It is a violation of this Article to drive a motorized vehicle in a manner that causes the tires to screech or squeal repeatedly on public or private property such that it causes a noise disturbance; repeatedly accelerate and decelerate a motorized vehicle on public or private property such that it causes a noise disturbance; or repeatedly shift the gears of the motorized vehicle up and down on private or public property, such that it creates a noise disturbance.

Sec. 34-38. - Liberal, non-conflicting construction.

The provisions of this Article shall be liberally construed such that its purpose is effectively rendered in the interest of the health, safety, and welfare of the citizens and residents of Polk City.

Sec. 34-39. Exemptions.

The provisions of this division, except for those specific prohibitions set forth in section 34-37 of this Article, shall not apply to the following sounds:

- (a) The unamplified human voice;
- (b) Normal automobile and truck traffic, and railway locomotives or cars;
- (c) Household or farming tools, appliances, and equipment meeting manufacturer's specifications as to sound, if applicable;
- (d) Aircraft and airport activity conducted in accordance with federal laws and regulations;
- (e) Maintenance of public service facilities;
- (f) Law enforcement activities, including training;
- (g) Licensed game hunting activities;
- (h) Emergency signals during emergencies;
- (i) Emergency testing;
- (j) Refuse collection and mosquito fogging;
- (k) Operation of any regulated or publicly owned utility;
- (l) Construction activities exempt from, or for which Polk City has issued a development permit; provided such activity occurs between 6:00 a.m. and 9:00 p.m.;
- (m) Organized athletic contests provided such activity occurs between 6:00 a.m. and 9:00 p.m.;
- (n) Sounds relating to and originating within any nonresidential land use districts under the Polk City Comprehensive Plan and Land Development Code (except for those sounds specifically prohibited in section 34-37 of this Article);
- (o) Sounds relating to and originating from legal, pre-existing, nonconforming, commercial and industrial activities (except for those sounds specifically prohibited in section 34-37 of this Article);
- (p) Boats and boating activity;
- (q) Phosphate mining activity;
- (r) Emergency devices and vehicles used for the purpose of alerting people of an emergency, or the emission of sound in performance of emergency work;
- (s) Lawful public gatherings provided such activity occurs between 6:00 a.m. and 9:00 p.m. (except for those sounds specifically prohibited in section 34-37 of this Article); and
- (t) Reasonable operation of equipment associated with the following activities between 6:00 a.m. and 9:00 p.m.: Lawn care, soil cultivation, maintenance of trees, hedges, and gardens; the use of lawnmowers, saws, and tractors; tree trimming; and limb clipping.

Sec. 34-40. - Separate violations.

Each separate occurrence shall be a separate violation.

Sec. 34-41. - Unreasonably excessive noise in motor vehicles.

The City Commission hereby ratifies and confirms the applicability of Section 10.5-60 in the municipal limits of Polk City."

SECTION 3. SEVERABILITY. If any provision of this ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such provision and such holding shall not affect the validity of any other provision, and to that end, the provisions of this ordinance are hereby declared severable.

SECTION 4. CONFLICTS. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict, including but not limited to Ordinance No. 20-05.

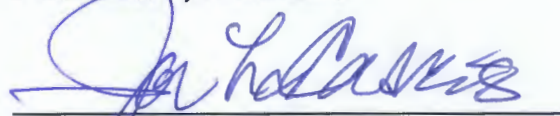
SECTION 6. INCLUSION INTO CITY CODE. It is the intention of the City Commission that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City.

SECTION 7. EFFECTIVE DATE. This ordinance shall take effect in accordance with and as provided for in state law.

PASSED ON FIRST READING this 15th day of June, 2020.

PASSED ON SECOND READING this 20th day of July, 2020.

POLK CITY, FLORIDA



Joe LaCascia, Mayor

ATTEST:



Patricia R. Jackson, City Clerk

APPROVED AS TO FORM AND
LEGALITY:



Thomas A. Cloud, City Attorney