

April 9, 2013

VIA E-MAIL TRANSMITTAL ONLY
legalnotices@bradenton.com

Ms. Flo Konesko
Legal Advertising
The Bradenton Herald
P.O. Box 921
Bradenton, Florida 34206

***RE: Notice of Publication on Proposed Ordinance 13-05
Revisions to Manatee County Noise Ordinance 08-12
Account No. 0001180500***

Dear Ms. Konesko:

The attached Notice of Public Hearing should be published as a regular legal classified ad on **APRIL 12, 2012** for a public hearing on April 23, 2013.

Please forward your original proof of publication affidavit and statement to me at your earliest opportunity.

Thank you for your assistance in this matter.

Sincerely,

Jo Ann C. Grace, Legal Assistant to
JAMES A. MINIX
Chief Assistant County Attorney

JAM/jcg
enc

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN, pursuant to Section 125.66(2)(a), Florida Statutes, that the Board of County Commissioners of Manatee County, Florida, will conduct a public hearing on **APRIL 23, 2013**, beginning at 9:00 a.m., or as soon thereafter as possible, in the Commission Chambers, located on the 1st Floor of the Manatee County Administrative Center, 1112 Manatee Avenue West, Bradenton, Florida, to consider the following:

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 CAUSES A NOISE DISTURBANCE 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.

Copies of the proposed **ORDINANCE 13-05** may be inspected by the public during normal business hours in the Office of the County Attorney, 1112 Manatee Avenue West, Suite 969, Bradenton, Florida. Interested parties may appear at the meeting or public hearing and be heard with respect to the proposed ordinance.

According to Section 286.0105, Florida Statutes, any person desiring to appeal any decision made by the Board of County Commissioners with respect to any matter considered at the above-referenced meeting or public hearing will need a record of the proceedings, and, for such purposes, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

Date to be published: **APRIL 12, 2013.**

ORDINANCE NO. ~~08-12~~ 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 SAID—MANATEE COUNTY; ESTABLISHING AND DEFINING CERTAIN TERMS; ESTABLISHING AND PROVIDING FOR CERTAIN EXCEPTIONS; PROHIBITING THE MAKING, CAUSING OR ALLOWING OF SAID—HARMFUL NOISE WHICH CAUSE A NOISE DISTURBANCE OR EXCEED CERTAIN SOUND LEVELS; PROVIDING FOR TECHNIQUES TO BE USED IN MEASURING LEVELS OF SAID—HARMFUL NOISE AND THE ESTABLISHMENT OF SAID—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—~~99-20~~ 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 ~~are~~ is increasing within the area of this County as population, industry and tourism grows; and

WHEREAS, the residents of ~~said~~ 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 ~~use~~ effect upon individuals, and are a detriment to the public

health, comfort, convenience, safety, welfare and prosperity of the residents of ~~said~~ 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, ~~and prohibitions and penalties~~ hereinafter contained and enacted; and

WHEREAS, it is further declared that these provisions, ~~and 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 ~~said~~ 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, 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 99-20, ~~but to incorporate many of the provisions contained in that ordinance along~~ and replace it with this ordinance containing several new 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 standard set forth in ANSI Standard S1.4-1983 (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 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 psychological effect on humans. "Noise" includes low frequency ~~vibrations~~ sounds, such as caused by amplified bass music that can induce vibration in building structures and elements.
~~amplification of bass instrumental sounds~~

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) ~~significantly interferes with the enjoyment of normal conduct of life, property or outdoor recreation, or~~ (c) Causes noise pollution. 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 or which is plainly audible in excess of the maximum permissible sound levels contained in this ordinance.

~~*Noise pollution* shall mean the presence of noise in an excessive or disturbing amount or of such duration, wave frequency or intensity as to be injurious to human or animal life or property.~~

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.

~~*Pure tone:* Any sound which can be distinctly heard as a single pitch or a set of single pitches. For the purposes of measurement, a pure tone shall exist if the one third octave band sound pressure level in the band with the tone exceeds arithmetic value of sound pressure levels of the two (2) contiguous one third octave bands by five (5) dB.~~

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 durations- and non-repetitive: Any sound with a duration of less than thirty seconds, ~~one minute.~~

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 S1.4-1971-1983, 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.)

Without direction as to the metric to be used or the duration of the measurement, any number of creative ways to measure the sound could be used to show that the subject noise is in compliance with the limits.

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 S1.4-1972-1983 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. ~~The tones exceeds arithmetic value the sound pressure levels of the two (2) contiguous one-third octave bands by five (5) dB.~~

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, but specifically not including music or other amplified sounds performed or played at volumes or vibrations that violate standards of this article.
- (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	7:00 a.m. to 10:00 p.m.

tractors, street sweepers, mosquito fogging, tree trimming and limb chipping and other normal community operations

- (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 U~~usual noises of construction and operation of construction equipment between the hours of 7:00 a.m. to 8:00 p.m.

(6) ~~The U~~usual engine noises of traffic and motor vehicles on the public right-of-way.

(7) Single family residential air-conditioning or pool pump units 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.

A unit is presumed to be in reasonable mechanical condition if it 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/ari/vav.php.

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 persuasive evidence exists to establish that the sound constitutes a “noise disturbance.”

(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, ~~law enforcement~~ 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 ~~operate~~ generate or cause to be ~~operated,~~ generated from any source, sound which, when measured at the receiving property ~~line~~ or within the boundary of the receiving property ~~line~~ from which the complaint originated ~~of the property~~ 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.

4. Eighty (80) dBA or Eighty-five (85) dBC if the receiving land is industrial.

(b) *Correction for character of sound.* For any source of sound which emits a ~~pure~~ 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 ~~ten (10)-~~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 ~~at or beyond the real property line of the property on which such sound is generated,~~ 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 (~~\$500.00~~)₁, or by imprisonment in the county jail not to exceed sixty (60) days₁ 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:

(a) First violation: Two Hundred Fifty Dollars (\$250).

(b) Repeat violation: 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

April 9, 2013 - Regular Meeting
Agenda Item #19

Subject

Proposed Noise Ordinance 13-05.

APPROVED IN OPEN SESSION April 9, 2013
BOARD OF COUNTY COMMISSIONERS, MANATEE COUNTY

Briefings

Briefing Provided Upon Request

Contact and/or Presenter Information

James A. Minix, Chief Assistant County Attorney
Jo Ann Grace, Legal Assistant, Ext. 3750

Action Requested

Motion to authorize publication of a Notice of Public Hearing on proposed Ordinance No. 13-05 which contains revisions to Noise Ordinance 08-12, amending Article II of Chapter 2-21 of the Manatee County Code by significant revisions to definitions, prohibited acts, civil remedies and citations, repeal, and codification.

Enabling/Regulating Authority

Sections 125.01 and 125.66, Florida Statutes.

Background Discussion

Noise Ordinance No. 08-12 was adopted by the Board of County Commissioners on March 26, 2008. The proposed amendments requested by the Building and Development Services Department will incorporate new provisions and specifics concerning the distinctions between certain types of noises producing vibration, the enforcement of any violation of the ordinance, and professional recommendations from acoustical consultants allowing for a more detailed and better explanation of terms. The proposed ordinance has been screened and vetted by the Manatee County Sheriff's Office, the State Attorney's Office and Manatee County staff. It is now ready for a public hearing.

The County Attorney's Office is requesting permission to publish a Notice of Public hearing regarding proposed Ordinance No. 13-05 which consists of revisions to Ordinance 08-12, and anticipates that the County Attorney's Office will bring this matter forth before the Board for a public hearing and future consideration.

County Attorney Review

Other (Requires explanation in field below)

Explanation of Other

See attached Notice of Public Hearing for publication in the Bradenton Herald and proposed Noise Ordinance No. 13-05 which will repeal and replace Noise Ordinance 08-12.

Reviewing Attorney

N/A

Instructions to Board Records

Please return a fully approved electronic copy of this agenda with its supporting documents to:
joann.grace@mymanatee.org. Sent 4/18/13 vj

Thank you.

Cost and Funds Source Account Number and Name

N/A

Amount and Frequency of Recurring Costs

N/A

Attachment: [Notice of Public Hearing2 Noise Ord 13-05.pdf](#)

Attachment: [Proposed Ord 13-05-Noise.pdf](#)