

ORDINANCE O-15-11

AN ORDINANCE OF THE CITY OF WINTER HAVEN, FLORIDA, AMENDING CHAPTER 12, ARTICLE II OF THE CODE OF ORDINANCES OF THE CITY OF WINTER HAVEN, FLORIDA, TO INCORPORATE THE PROVISIONS OF POLK COUNTY BOARD OF COUNTY COMMISSIONERS ORDINANCE NO. 14-073 ADOPTED DECEMBER 16, 2014, BY THE POLK COUNTY BOARD OF COUNTY COMMISSIONERS REGARDING PROHIBITING UNREASONABLY EXCESSIVE NOISE IN MOTOR VEHICLES IN THE CITY OF WINTER HAVEN, FLORIDA; PROVIDING INTENT AND PROVIDING FOR REPEALER; THE CORRECTION OF SCRIVENERS ERRORS, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Code of Ordinances of the City of Winter Haven, Florida, was adopted in 1959 and prescribed regulations regarding noise control; and

WHEREAS, as originally adopted by the City Commission of the City of Winter Haven, Florida, the regulations regarding noise control within the municipal boundaries of the City of Winter Haven, Florida, were codified in Sections 12-26 through 12-55, Chapter 12, Article II, Code of Ordinances but did not specifically address prohibiting unreasonably excessive noise in motor vehicles within the municipal boundaries of the City of Winter Haven, Florida; and

WHEREAS, the Polk County Board of County Commissioners adopted Ordinance No. 14-073 on December 16, 2014, prohibiting unreasonably excessive noise in motor vehicles in Polk County, Florida; and

WHEREAS, the provisions of Polk County Board of County Commissioners' Ordinance No. 14-073 shall apply to unincorporated Polk County, Florida, and the municipalities within Polk County, Florida, unless a municipality adopts or has adopted an Ordinance on the subject matter contained herein; or unless a municipality sends a written letter to the Board opting out of the Polk County Board of County Commissioners' Ordinance No. 14-073; and

WHEREAS, it is the intent of the City Commission of the City of Winter Haven, Florida, for the provisions of the Polk County Board of County Commissioners' Ordinance No. 14-073 to be applicable within the municipal boundaries of the City of Winter Haven, Florida; and

WHEREAS, amending Chapter 12, Article II of the Code of Ordinances of the City of Winter Haven, Florida, to incorporate the regulations prescribed by the Polk County Board of County Commissioners Ordinance No. 14-073

adopted on December 16, 2014, regarding prohibiting unreasonably excessive noise in motor vehicles will advance the health, safety and welfare of the residents and citizens of the City of Winter Haven, Florida.

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER HAVEN, FLORIDA, AS FOLLOWS:

1. Chapter 12, Article II, Section 12-39 of the Code of Ordinances of the City of Winter Haven, Florida, is hereby added to read as follows:

The provisions of the Polk County Board of County Commissioners Ordinance No. 14-073 adopted on December 16, 2014, and attached hereto and incorporated by reference as Exhibit "A", are hereby incorporated into the Code of Ordinances of the City of Winter Haven, Florida, it being the intent of the City Commission of the City of Winter Haven, Florida, for all provisions of Polk County Board of County Commissioners' Ordinance No. 14-073 to be applicable and in full force and effect within the municipal boundaries of the City of Winter Haven, Florida.

2. All ordinances in conflict herewith are hereby repealed to the extent necessary to give this Ordinance full force and effect, provided however, that nothing herein shall be interpreted so as to repeal any existing ordinance or resolution relating to means of securing compliance with the City's Code of Ordinances, unless such repeal is explicitly set forth herein.

3. If the instance arises that the provisions or requirements of this Ordinance conflict with the requirements or provisions of any other City of Winter Haven adopted Ordinance, then the requirements adopted in this Ordinance shall apply over any other provision in conflict therewith.

4. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City of Winter Haven, Florida, hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

5. 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 of Winter Haven; and that sections of this Ordinance may be renumbered or re-lettered and the word "ordinance" may be changed to, "section", or such other appropriate word or phrase in order to accomplish such intentions; and regardless of whether such inclusion in the Code of Ordinances of the City of Winter Haven is accomplished, sections of this Ordinance may be renumbered or re-lettered and the correction of typographical and/or scrivener's errors which do not affect the intent

may be authorized by the City Manager or his or her designee, without need of public hearing, by filing corrected or re-codified copy of same with the City Clerk.

6. The effective date of this Ordinance shall be immediately upon adoption at Second Reading.

INTRODUCED on first reading this 12th day of January, 2015.


PASSED on second reading this 26th day of January, 2015.

CITY OF WINTER HAVEN, FLORIDA

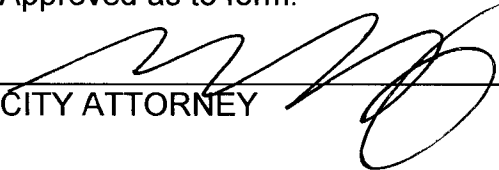


MAYOR-COMMISSIONER

ATTEST:


CITY CLERK

Approved as to form:


CITY ATTORNEY

POLK COUNTY ORDINANCE NO. 14- 073

AN ORDINANCE OF THE POLK COUNTY BOARD OF COUNTY COMMISSIONERS PROHIBITING UNREASONABLY EXCESSIVE NOISE IN MOTOR VEHICLES IN POLK COUNTY, FLORIDA; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROHIBITED ACTS; PROVIDING FOR CONFLICT WITH OTHER LAWS; PROVIDING FOR PENALTIES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR AN ASSESSMENT; PROVIDING FOR APPLICABILITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE AND AN EFFECTIVE DATE.

WHEREAS, Article II, Section 7 of the Florida Constitution states “(a) It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources;” and

WHEREAS, unreasonably loud, raucous, jarring, unseemly, disturbing, and excessive noise has been a serious problem in Polk County and problems will increase in conjunction with the growth, development, and urbanization of Polk County and changes in culture and technology; and

WHEREAS, it is the purpose of this Ordinance to prevent, prohibit, and provide for the abatement of unreasonably excessive noise in order to reasonably protect and promote the health, safety, general welfare, and the reasonable peace and quiet of the residents of Polk County; and

WHEREAS, such unreasonably excessive noise problems may not be amenable to practical measurement by decibel measuring apparatus; and

WHEREAS, unreasonably excessive noise from motor vehicle radios or other motor vehicle sound making devices is a public safety hazard which can inhibit a driver's ability to hear, as well as create a hazard and annoyance to other citizens; and

WHEREAS, such unreasonably excessive noise, as defined in this Ordinance, represents a serious threat to the public health, safety or welfare, and is irreparable or irreversible in nature; and

WHEREAS, the citizens of Polk County, Florida have the right to an environment free from such unreasonably excessive noise.

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

Section 1. Incorporation of Recitals.

The recitals above are fully incorporated herein.

Section 2. Purpose and Intent:

This Ordinance is not intended to limit or regulate the content of speech.

Section 3. Definitions:

For the purposes of this Ordinance the following definitions apply:

- A) "Plainly audible" means any sound produced by a radio or other mechanical or electrical sound making device or instrument from within a motor vehicle, including sound produced by a portable sound making device, that can be clearly heard outside the motor vehicle by a person using his or her normal hearing faculties at a distance of fifty (50) feet or more from a motor vehicle.
- B) "Unreasonably excessive" is when the sound is plainly audible at a distance of fifty (50) feet or more from a motor vehicle.

C) "Law enforcement officer" means any sworn law enforcement officer.

Section 4. Prohibited Acts:

A) It is unlawful for any person who operates or occupies a motor vehicle in Polk County, Florida to operate or amplify the sound produced by a radio or other mechanical or electrical sound making device or instrument from within the motor vehicle so that the sound is unreasonably excessive.

B) To determine whether sound is "plainly audible," measurements shall be taken in accordance with the following:

1. The primary means of detection shall be by means of the law enforcement officer's ordinary auditory senses, so long as the law enforcement officer's hearing is not enhanced by any device, such as a microphone or hearing aid.
2. The law enforcement officer must have a direct line of sight and hearing to the motor vehicle producing the sound so that the law enforcement officer can readily identify the offending motor vehicle and the distance involved.
3. The law enforcement officer need not determine the particular words or phrases being produced or the name of any song or artist producing the sound.

The detection of a rhythmic bass reverberating type sound is sufficient to constitute a plainly audible sound.

Section 5. Conflicts with Other Laws:

If the instance arises that the provisions or requirements of this Ordinance conflict with the requirements or provisions of any other adopted County Ordinance, then the requirements adopted in this Ordinance shall apply over any other provision in conflict therewith.

Section 6. Penalties:

In accordance with Section 125.69 Florida Statutes, any person, entity, group, representative, or corporation violating any provision of this Ordinance shall be subject to the following penalties.

- A) First offense: A fine of \$100.00.
- B) Second offence: A fine of \$250.00.
- C) Third or subsequent charge: A fine of \$500.00.

Section 7. Enforcement:

This Ordinance may be enforced by the Sheriff of Polk County and his Deputies in Polk County, Florida; and may be enforced by municipal law enforcement officers within their specific municipal jurisdictional boundaries for the municipalities that this Ordinance is effective within, as specified in Section 9 below. Fines assessed under this Ordinance shall be distributed in accordance with all applicable County Ordinances and Florida Statutes. Thereafter, remaining funds from the fines shall be distributed in the following manner: If a municipality issues a violation of this Ordinance and a fine is assessed, then 80 percent of the remaining funds shall be distributed to the municipality by the Clerk, and the Clerk shall issue the remaining 20 percent of the funds to the County. If the Polk County Sheriff's Office issues a violation of this Ordinance and a fine is assessed, then 100 percent of the remaining funds shall be distributed to the County by the Clerk.

Section 8. Assessment:

One (1) year after the effective date of this Ordinance, the Sheriff of Polk County shall provide a written report to the Polk County Board of County Commissioners assessing the

effectiveness of this Ordinance, together with any recommended changes that would enhance and further protect the public health, safety, and welfare of the citizens of Polk County, Florida.

Section 9. Applicability:

This Ordinance shall apply to unincorporated Polk County, Florida, and the municipalities within Polk County, Florida (hereinafter "municipality"), unless a municipality adopts or has adopted an ordinance on the subject matter contained herein; or unless a municipality sends a written letter to the Board opting out of this Ordinance.

Section 10 Severability:

If any section, subsection, sentence, clause, phrase or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional.

Section 11. Filing of Ordinance and Effective Date:

A certified copy of this Ordinance shall be filed with the Florida Department of State. This Ordinance shall take effect upon filing with that office.

STATE OF FLORIDA

COUNTY OF POLK

I, STACY M. BUTTERFIELD, Clerk and Auditor of the Polk County, Board of County Commissioners ("Board") hereby certify that the foregoing is a true and correct copy of Ordinance No. 14-073 which was adopted by the Board on the 10 day of December, 2014.

WITNESS my hand and official seal of said Board this 16th day of December
2014.

STACY M. BUTTERFIELD,

Clerk and Auditor of the Board

By: Alison Prefatt
Deputy Clerk



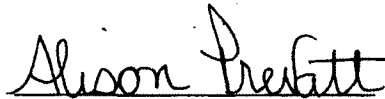
STATE OF FLORIDA)
)
COUNTY OF POLK)

I Stacy M. Butterfield, County Clerk and Comptroller for Polk County, Florida, hereby certify that the foregoing is a true and correct copy of Ordinance No.14-073 adopted by the Board on December 16th, 2014.

WITNESS my hand and official seal on this 16th day of December, 2014.

STACY M. BUTTERFIELD, CLERK

By:



Alison Prevatt
Deputy Clerk





FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

December 16, 2014

Ms. Alison Prevatt
Deputy Clerk
Finance and Accounting
Post Office Box 988
Bartow, Florida 33831-0988

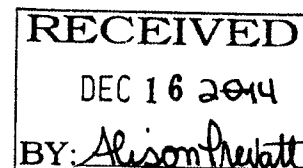
Dear Ms. Prevatt:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Polk County Ordinance No. 14-073, which was filed in this office on December 16, 2014.

Sincerely,

Ernest L. Reddick
Program Administrator


ELR/lb




CITY OF WINTER HAVEN FACT SHEET
CITY COMMISSION MEETING
January 12, 2015

DATE: December 31, 2015

TO: Honorable Mayor and City Commissioners

VIA: Deric C. Feacher, City Manager 

FROM: Charlie Bird, Chief of Police 

SUBJECT: Ordinance O-15-11 - Adopting Polk County Board of County Commissioners' Motor Vehicle Noise Ordinance

BACKGROUND:

On December 16, 2014, the Polk County Board of County Commissioners (BOCC) adopted Ordinance No. 14-073 prohibiting unreasonably excessive noise in motor vehicles in Polk County, Florida. The provisions of Polk County BOCC Ordinance No. 14-073 shall apply to unincorporated Polk County, Florida, and the municipalities within Polk County, Florida, unless a municipality adopts or has adopted an Ordinance on the subject matter contained herein; or unless a municipality sends a written letter to the Board opting out of the Polk County BOCC Ordinance No. 14-073.

The City Commission of the City of Winter Haven originally adopted regulations regarding noise control within the municipal boundaries of the City of Winter Haven, Florida, which are codified in Sections 12-26 through 12-55, Chapter 12, Article II, Code of Ordinances, but did not specifically address prohibiting unreasonably excessive noise in motor vehicles within the municipal boundaries of the City of Winter Haven, Florida.

An Ordinance amending Chapter 12, Article II of the Code of Ordinances of the City of Winter Haven, Florida, has been prepared to incorporate the regulations prescribed by the Polk County BOCC Ordinance No. 14-073 adopted December 16, 2014, regarding prohibiting unreasonably excessive noise in motor vehicles.

Prior to second reading, a meeting will be held January 22, 2015 at 6:30 pm in the John Fuller Auditorium in City Hall to answer any questions relative to this Ordinance.

FINANCIAL IMPACT:

There are no financial impacts to the City associated with the approval of Ordinance O-15-11.

RECOMMENDATION:

Staff recommends the City Commission approve Ordinance O-15-11.

ATTACHMENTS:

Ordinance O-15-11 with Exhibit "A" (Polk County BOCC Ordinance No. 14-073)