

ORDINANCE NO. 960

AN ORDINANCE OF THE CITY OF ARCADIA, FLORIDA,
A MUNICIPAL CORPORATION, RELATED TO NOISE;
AMENDING AND RESTATING ARTICLE III OF
CHAPTER 50 OF THE CODE OF ORDINANCES, CITY OF
ARCADIA, FLORIDA; PROVIDING FOR THE
REGULATION OF NOISE WITHIN THE CITY;
PROVIDING FOR SEVERABILITY; AND PROVIDING
FOR AN EFFECTIVE DATE.

THE CITY OF ARCADIA, FLORIDA, HEREBY ORDAINS as follows:

Section 1. Amendment of the Code of Ordinances. The Code of Ordinances of the City of Arcadia, Florida, is amended to amend and restate in its entirety Article III of Chapter 50 (Environment) to read as follows:

Article III. NOISE

Sec. 50-61. 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:

- (a) *A band level* means the total sound level of all noise as measured with a sound level meter using the A weighing network. The unit of measurement is the dBA.
- (b) *Daytime* means 7:00 a.m. to 11:00 p.m. in commercial and manufacturing use occupancies and 7:00 a.m. to 10:00 p.m. in residential use occupancies.
- (c) *Decibel* means a unit of level equal to ten times the logarithm (base 10) of the ratio of any two quantities proportional to power.
- (d) *Emergency work* means work made necessary to protect persons or property from exposure to danger.
- (e) *Nighttime* means 11:00 p.m. to 7:00 a.m. in commercial and manufacturing use occupancies and 10:00 p.m. to 7:00 a.m. in residential use occupancies.
- (f) *Noise level* means the sound pressure level as measured in dBA by a sound level meter.
- (g) *Plainly audible* means any sound or noise produced or reproduced by a radio, tape player, television, electronic audio equipment, musical instrument, sound amplifier, or other mechanical or electronic soundmaking device, that can

be clearly heard by a person using his normal hearing faculties, at a distance of 200 feet or more from the real property line of the source of the sound or noise.

(h) *Sound level meter* means an instrument, including a microphone, an amplifier, an output meter, and frequency weighing networks for the measurement of noise and sound levels in a specified manner.

(i) *Sound pressure level* (in decibels) of sound is 20 times the logarithm to the base 10 of the ratio of the pressure of this sound to the reference pressure, which reference pressure must be explicitly stated.

(j) *Time* means the then current legal time in the city.

(k) *Technical definitions* are in accordance with American Standard S1.1-1960 entitled, "Acoustical Terminology."

Sec. 50-62. Classification of use occupancies; projection of noise from use to another.

(a) *Classification.* For purposes of defining the "use occupancy," all premises containing habitually occupied sleeping quarters shall be considered in residential use. All premises containing businesses where sales, professional or other commercial use is legally permitted shall be considered commercial use. All premises where manufacturing is legally permitted shall be considered manufacturing use. In cases of multiple use, the more restrictive use category shall prevail. Hospitals, schools, and church areas are considered residential. Any area not otherwise classified shall conform to commercial standards.

(b) *Projection of noise.* Sound or noise projecting from one use occupancy into another use occupancy with a different noise level shall exceed neither the limits of the use occupancy into which the noise is projected nor the noise limits of the use occupancy from which the noise originates.

Sec. 50-63. Measurement of noise.

(a) The measurement of sound or noise shall be made with a sound level meter meeting the standards prescribed by the American National Standards Institute, S1.4 American National Standard Specifications for Sound Level Meters. The instruments shall be maintained in calibration and good working order. A calibration check shall be made of the system at the time of any noise measurement. Measurements recorded shall be taken so as to provide a proper representation of the noise source. The microphone during measurement shall be positioned so as not to create any unnatural enhancement or diminution of the measured noise. A windscreen for the microphone shall be used at all times.

(b) The slow meter response of the sound level meter shall be used in order to best determine the average amplitude.

(c) The measurement shall be made at any point on the property into which the noise is being transmitted and shall be made at least three feet away from any ground, wall, floor, ceiling, roof and other plane surface, or the closest city public right-of-way, whichever is closer.

(d) In case of multiple occupancy of a property, the measurement may be made at any point inside the premises to which any complainant has right of legal private occupancy; provided, that the measurement shall not be made within three feet of any ground, wall, floor, ceiling, roof or other plane surface, or the closest city public right-of-way, whichever is closer.

(e) All noise measurements provided for in this article will be made by designated officials of the city who are qualified to operate the apparatus used to make the measurements as provided for in this article.

Sec. 50-64. Tables of noise level limits.

(a) Table I.

(1) Table I specifies noise level limits in dBA which if exceeded will have a high probability of producing permanent hearing loss in anyone in the area where the noise levels are being exceeded. No noise shall be permitted within the city which exceeds in duration or noise level that as stated in table I as follows:

TABLE I: Permissible Noise Exposures	
Duration per Day, Continuous Hours	Noise Level dBA
8	90
6	92
4	95
3	97
2	100
1 1/2	102
1	105
1/2	110
1/4 or less	115

(2) When the daily noise exposure is composed of two or more periods of noise exposure at different levels, their combined effect shall be considered, rather than the individual effect of each. If the sum of the following fractions: $C1/T1 + C2/T2 \dots Cn/Tn$ exceeds unity, the mixed exposure shall be considered to exceed the noise level limit value. Cn indicates the total time of

exposure at a specified noise level, and T_n indicates the total time of exposure permitted at that level.

(3) If the device producing the noise whose noise levels are in excess of Table I cannot be toned down so that the noise levels are less than those in Table I, protection should be provided for those in the area of the noise. The protection must reduce the noise level to below the limits of Table I and must not, itself, produce a safety hazard. Procedures must exist that guarantee that the people in the area of the noise will use the protection.

(b) Table II. Tables IIA and IIB specifies noise levels that represent limits that if exceeded interfere with the peace, quiet and general welfare of the city and its inhabitants. No noise shall be permitted within the city that exceeds the noise level limits of table II except as expressly authorized by this article.

TABLE IIA: Maximum Allowable Noise Level Limits in dBA for Residential Occupancies	
Time of Day	Noise Level dBA
Day (7:00 a.m. to 10:00 p.m.)	61
Night (10:00 p.m. to 7:00 a.m.)	55

TABLE IIB: Maximum Allowable Noise Level Limits in dBA for Commercial and Manufacturing Occupancies	
Time of Day	Noise Level dBA
Day (7:00 a.m. to 11:00 p.m.)	66 (Commercial) 71 (Manufacturing)
Night (11:00 p.m. to 7:00 a.m.)	60 (Commercial) 65 (Manufacturing)

These levels may not be exceeded in any one single incident if the single incident represents a part of the normal operation of the facility.

Sec. 50-65. Motor vehicles.

It shall be a violation of this article to operate a motor vehicle, or combination of vehicles towed by the motor vehicle, that creates a noise or sound that exceeds the noise level limits in Table II except when the vehicles are traveling on public streets, highways, driveways, parking lots, and ways open to vehicle travel. It shall be a violation to operate a motor vehicle in such manner as to exceed the noise level limits of Table III when the vehicle is operating on public streets, highways, driveways, parking lots, and ways open to vehicle travel. Normal operation includes normal acceleration, deceleration, and operation at maximum normal speeds in all gears and ranges up to the speed limits currently effective on those streets of the city over which the vehicles may be operated.

TABLE III: Noise Level Limits for Motor Vehicles	
Type of Vehicle	Noise Level dBA
Trucks and buses	85 dBA measured 50 feet from the source
Passenger cars, motorcycles, and other motor vehicles	79 dBA measured 50 feet from the source

The measurement is made as the vehicle drives past. If the reading is above that listed in Table III at any time, the vehicle is in violation of this article. All distances are measured from the center of the vehicle or center of the driving lane in which the vehicle is being driven.

Sec. 50-66. Exemptions.

The following uses and activities shall be exempt from noise level regulations except as listed in Table I:

- (a) Air conditioners and lawn mowers are exempt from provisions of Table II when the equipment is functioning in accord with the manufacturer's specifications and with all manufacturer's mufflers and noise reducing equipment in use and in proper operating condition.
- (b) Nonamplified crowd noises and music resulting from activities such as football and baseball games, fairs and other events put on by student, governmental or community groups.
- (c) 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 such equipment is operated in accord with the manufacturer's specifications and with all manufacturer's mufflers and noise reducing equipment in use and in proper operating condition.
- (d) Noises of safety signals, warning devices and emergency pressure relief valves.
- (e) Noises resulting from any authorized emergency vehicle when responding to any emergency call or acting in time of emergency.
- (f) Noises resulting from emergency work.
- (g) Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit has been granted by the city. Regulation of noises emanating from operations under permit shall be according to the conditions and limits stated on the permit.
- (h) Noises made by persons having obtained a permit to use the streets are exempt from Table II.

(i) Any aircraft operated in conformity with or pursuant to federal law, federal air regulations, and air traffic control instruction used pursuant to and within the duly adopted federal air regulations shall be exempt. Any aircraft operating under technical difficulties in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations are also exempt.

(j) All noises coming from the normal operations of railroad trains are exempt from Table II.

Sec. 50-67. Special permits.

(a) Application; conditions for issuance. Applications for a permit for relief from the maximum allowable noise level limits designated in this chapter, except from Table I, may be made in writing. Any permit granted by the city must be in writing and must contain all conditions upon which the permit shall be effective. The city council may grant the relief applied for and may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding neighborhood, including without limitation the use of mufflers, screens, or other sound attenuating devices.

(b) Entertainment related special permits. Permits may be granted for the purpose of entertainment under the following conditions:

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

(2) The permit will be given for only four hours in one 24-hour day, or any reasonable extension, as authorized by the city council.

(3) The function must be staged between the hours of 9:00 a.m. and 12:30 a.m. of the following day.

(4) Functions for which the permits are issued shall be limited to a noise level not to exceed 70 dBA for more than three cumulative minutes out of any continuous 60-minute period.

(c) Non-entertainment related special permits. Special permits for non-entertainment special purposes may be issued after considering the following:

(1) 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;

(2) If the special purpose relates to the operation of a trade or business, that the special purpose be necessary to the operation of the applicant's trade or business;

(3) 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;

(4) If the special purpose does not relate to the operation of a trade or business, that the special purpose be compatible with the ordinary activities of the neighborhood in which the special purpose is to occur;

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

(6) The special purpose relates to the operation of a trade or business located on a property which has been annexed into the city where such special purpose was existing at the time of annexation and was not the subject of any enforcement action pursuant to any noise regulation of DeSoto County immediately prior to the annexation.

(d) Limitations. No permit may be issued to permit the use of any loudspeaker or sound device on the exterior of any building that at any time exceeds the noise level limits in Table II, except those used for emergency warnings.

(e) Special permits for emergency purposes. Notwithstanding any other provision of this section, a special permit may be issued hereunder for any emergency purpose by the city administrator and the mayor (or if the mayor is unavailable, the vice mayor, or if both the mayor and the vice mayor are unavailable by any member of the city council). Any special permit issued for an emergency purpose shall expire at the end of the next city council meeting at which a quorum is present unless acted upon by the city council.

Sec. 50-68. Unnecessary noises prohibited; unnecessary noise standard.

(a) Some sounds may be such that they are not measurable by the sound pressure level meter or may not exceed the limits of Tables I, II, or III, but they may be excessive, unnatural, prolonged, or unusual, and are a detriment to the public health, comfort, convenience, safety, welfare, and prosperity of the residents of the city.

(b) Noise prohibited by this section are unlawful notwithstanding the fact that no violation of sections 50-62--50-66 is involved, and notwithstanding the fact that the activity complained about is exempted in sections 50-62--50-66. Thus, the following acts, among others, are declared to be loud, disturbing and

unnecessary noises in violation of this article; but this enumeration shall not be deemed to be exclusive:

(1) The sounding of any horn or signaling device on any automobile or other vehicle, except as a danger warning; the creation by means of any signaling device of any unreasonably loud or harsh sound; the sounding of any signaling device for any unnecessary and unreasonable period of time; and the unreasonable use of any signaling device.

(2) The using, operating or permitting to be played, used or operated of any radio, television, tape, record or compact disc player, amplifier, musical instrument, or other machine or device used for the production, reproduction or emission of sound; any prolonged sounds made by people; and the keeping of any animal or bird which by causing frequent or long-continued noise in such manner as to disturb the public peace, quiet and comfort of the neighboring inhabitants or at any time with greater intensity than is necessary for convenient hearing for the persons who are in the room, vehicle or chamber in which such sound emitter is operated and who are voluntary listeners to the sound. Quieter standards are expected during nighttime hours.

(c) Any person making a complaint under this section shall be required to sign a sworn complaint either prior to or immediately after an arrest is made, otherwise no such complaint will be honored.

Sec. 50-69. Specific prohibitions.

(a) Noises designated; enforcement. The operation of amplifiers, musical instruments or other mechanical or electronic devices or the use, operation or playing of any radio, tape, record or compact disc player, television, electronic audio equipment, musical instrument, sound amplifier, or other mechanical or electronic soundmaking device that produces or reproduces sound or noise in a manner that is plainly audible at a distance of 200 feet or more away from the real property line or from the vehicle that is the source of the sound or noise is declared to be a violation of this article.

(b) Standards. Any police officer or other official designated by the city administrative assistant who hears a noise or sound that is plainly audible shall measure the noise or sound according to the following standards:

(1) The primary means of detection shall be by means of the official's normal hearing faculties, so long as the official's hearing is not enhanced by any mechanical device, such as a microphone or hearing aid.

(2) The official must have a direct line of sight and hearing to the real property or vehicle that is the source of the sound or noise so that the official can readily identify the offending source of the sound or noise and the distance involved.

(3) The official need not recognize the particular words or phrases being produced or the name of any song or artist producing the noise or sound. The detection of a rhythmic bass reverberating type of noise or sound is sufficient to constitute a plainly audible noise or sound.

(c) Enforcement procedures and enforcement. The following procedures shall be followed by the designated official when enforcing this article:

(1) The designated official shall investigate and determine if any noise or sound is in violation of the specific noise prohibitions provided in this article.

(2) If a noise level is found to be in violation of this section, the designated official shall give a warning to the person responsible for the plainly audible sound or noise.

(3) If sound or noise is not eliminated or abated within a reasonable time after warning, or if the noise or sound is abated after warning and then reoccurs, a notice of violation shall be issued, or the person in possession or control of the cause of the unlawful sound or noise may be arrested and charged with violating this article and upon conviction shall be subject to the penalties designated in this article. For purposes of this section, a reasonable time means such length of time as may fairly, properly and reasonably be allowed or required to eliminate or abate a noise or sound deemed to be in violation of this section, after a warning has been issued. The duration of time shall be dependent on the source of the noise or sound and what action that can be taken to eliminate the noise or sound causing the violation.

Sec. 50-70. Noncompliance with article declared unlawful.

It shall be a violation of this article, except as otherwise expressly permitted, to make, cause or allow the making of any noise or sound that exceeds the limits set forth in this article.

Sec. 50-71. Violations, penalties.

(a) Warnings.

(1) When a designated official of the city determines that there is a violation of the noise level limits contained in this article, he shall issue an official warning to the person responsible for the noise. The warning shall advise the person of the violation of the allowable noise limits, and of the possible penalty if he fails to reduce the noise to such allowable limits or eliminate the noise.

(2) After the person responsible for the noise is given such warning, a reasonable time to comply with the same shall be given. If the limits of Table I

are exceeded, a "reasonable time" is instant. Absent special circumstances, "reasonable time" (where Table I limits are not exceeded) as used in this section is considered 15 minutes in the case of nonvehicular noise and two calendar days for vehicular noise. The term "vehicular noise" does not include radios, tape and compact disc players or other electronically amplified noise being emitted from a vehicle.

(3) For the purposes of this section, it is sufficient warning for all prohibited noises if the person responsible for any succeeding noises is warned of one offending noise of the same type per 14-day period.

(b) Civil infraction; violation of article; confiscation of noise emitter.

(1) If the noise level is not reduced or eliminated to allowable limits within a reasonable time after the warning as prescribed in subsection (a) of this section, the person so warned and not complying shall be cited for a violation of this article and shall be subject to the penalties designated. Each day the violation continues shall be considered a separate violation.

(2) Any person responsible for an unlawful noise shall be subject to the loss of the noise emitter if they are cited three times under this article within a 12-month period and if the citations were for noises created by the same or same type of noise emitter and if the citations were either not contested or were upheld by court if contested. Upon the third citation, the appropriate court shall confiscate the noise emitter and deposit it with the city until such time as the violator can positively demonstrate to the court his willingness and ability to operate the emitter within the limits prescribed by this article. Any further violation shall result in permanent confiscation by the appropriate court.

(3) The city shall notify the operator of any device that produces noise in excess of the limits set by table I that it is a health hazard. The city administrative assistant shall have the power and authority to have the device removed or toned down instant until such time as it can be otherwise operated in compliance with this article.

(c) Injunctions. The operation or maintenance of any device, instrument, vehicle or machinery in violation of any provisions of this article that endangers the comfort, repose, health and peace of residents in the area is declared to be a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

(d) Responsibility of owner of property. The owner, tenant or lessee of property, or a manager, overseer or agent, or any other person lawfully entitled to possess the property from which the offending noise is emitted and at which time the offending noise is emitted shall be responsible for compliance with this article; and each may be cited for violations of this article. It shall not be a lawful defense to assert that some other person caused the noise, but the lawful

possessor of the premises shall be responsible for operating or maintaining the premises in compliance with this article and shall be cited whether or not the person actually causing the noise is also cited.

(e) Penalties.

(1) The civil penalties to be imposed for violation of this article are as follows:

- a. \$100.00 for the first incident;
- b. \$300.00 for the second incident within a 12 month period;
- c. \$500.00 for the third incident within any 12 month period.

and

(2) The civil penalties to be imposed for violation of this article if the person who has committed the civil infraction does not contest the citation are as follows:

- a. \$50.00 for the first incident;
- b. \$150.00 for the second incident within a 12 month period;
- c. \$250.00 for the third incident within any 12 month period.

and

(3) Any incident in excess of three within any 12 month period shall not be a civil infraction but shall be a misdemeanor punishable by a fine of up to \$500.00, incarceration of up to 60 days in jail, or both.

Sec. 50-72. Operation of radios or other mechanical sound-making devices or instruments in vehicles; exemption.

(a) It shall be unlawful and shall constitute a nuisance for any person operating or occupying a motor vehicle on a street, highway or on other public or private property, to operate or amplify the sound produced by a radio, tape player, compact disk player or other mechanical sound-making device or instrument on or within the motor vehicle so that the sound is:

(1) Plainly audible at a distance of 100 feet or more from the motor vehicle; or

(2) Louder than necessary for the convenient hearing by persons inside the vehicle in residential areas or areas adjoining churches, schools or hospitals.

(b) The provisions of this section shall not apply to any law enforcement motor vehicle equipped with any communication device necessary in the performance of law enforcement duties or to any emergency vehicle equipped with any communication device necessary in the performance of any emergency procedures.

(c) The provisions of this section shall not apply to motor vehicles used for business or political purposes which in the normal course of conducting such business uses sound-making devices. The provisions of this subsection shall not be deemed to prevent the city, with respect to the street and highways within its boundaries and within the reasonable exercise of the police power, from regulating the time and manner in which such business may be operated.

(d) The provisions of this section do not apply to the noise made by a horn or other warning device permitted by Section 316.271, Florida Statutes, when used as intended.

(e) If the vehicle is unoccupied at the time the violation is observed, the operator of the vehicle shall be deemed to be the person last operating the vehicle or, if the last operator cannot be determined, the registered owner of the vehicle.

(f) If a notice or citation of a noise violation is not satisfied by full payment of the penalty imposed by that notice or citation within a period of 14 days of the date of the issuance of that notice or citation, the police department shall:

(1) Cause to be sent to the person to whom the notice or citation was issued a summons for court appearance; or

(2) Immobilize, by suitable device, the wheels of any motor vehicle owned by such person wherever it may be found on any street or right-of-way in the city and tag the vehicle such that the operator knows to contact the city police department to have the vehicle released.

(g) Release by the city of a motor vehicle immobilized under this section may be had after:

(1) Payment of the following:

a. All parking violation fines; and

b. All applicable fees assessed for the immobilization;

(h) A vehicle immobilized under this section may be treated as abandoned under applicable laws of the state and city if no operator contacts the city within twelve (12) hours after the immobilization device is affixed to the vehicle.

Sec. 50-73. Animals and birds.

It shall be a violation of this article for the owner or custodian of any animal or bird, other than a farm animal on real property zoned for agricultural use, to allow that animal or bird to frequently or continuously howl, bark, meow, squawk or make other sounds indigenous to such animal which creates a noise disturbance which is plainly audible across a residential or commercial real property line. It shall be a violation of this article for the owner or custodian of any dog to allow that dog to bark, bay, cry, howl, or make any other similar noise continuously for a period of ten minutes or bark intermittently for one-half hour or more to the disturbance of any person at any time, day or night, regardless of whether the dog is physically situated in or upon private property. It shall not be a violation of this article, however for any animal or bird to give a sound of danger warning under circumstances reasonably requiring the need for a warning.

Section 2. Severability. If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the remainder of this ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance shall be effective immediately upon final passage by the City Council.

Passed by the City Council of the City of Arcadia, Florida on this 6th day of JULY 2010.

By:


Roosevelt Johnson, Ed.D., Mayor

ATTEST:


Dana L.S. Williams, CMC, City Recorder

Approved as to Form:


William S. Galvano, City Attorney

First Reading: 6/15/10

Second Reading: 7/6/10