

**ORDINANCE NO. 2022-15**

AN ORDINANCE OF THE CITY OF PORT ORANGE, FLORIDA, AMENDING THE CODE OF ORDINANCES CHAPTER 42, NUISANCES, ARTICLE IV, NOISE AND LIGHT REGULATIONS, SECTION 42-79 TO REPLACE THE TOURIST USE OCCUPANCY WITH COMMERCIAL USE OCCUPANCY; SECTION 42-80 TO ADDRESS VEHICLE NOISE REGULATION PREEMPTION; SECTION 42-81 TO ADDRESS VESSEL NOISE REGULATION PREEMPTION; SECTION 42-82 TO CREATE A PREEMPTION EXEMPTION; REPEALING SECTION 42-83 RELATED TO SPECIAL NOISE PERMITS, AND REPLACING WITH THE CREATION OF ENTERTAINMENT DISTRICTS WITH SPECIAL NOISE RESTRICTIONS; SECTION 42-84 AMENDING METHODS OF ENFORCEMENT; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council acknowledges that live entertainment can spur economic growth in areas in need of redevelopment; and

WHEREAS, a variety of local live entertainment provides an outlet for our residents to enjoy without having to travel to other municipalities; and

WHEREAS, the noise generated by live entertainment must be balanced against the rights of surrounding property owners to the quiet enjoyment of their properties; and

WHEREAS, amendment of the current Code of Ordinances is necessary to establish various entertainment districts with more flexible noise limitations in order to encourage local entertainment and spur economic development; and

WHEREAS, amendment of the current Code of Ordinance is also necessary to address various clean-up items and preemption issues; and

WHEREAS, for purposes of this ordinance words with underlined (underlined) type shall constitute additions to the original text and words with strikethrough (~~strikethrough~~) type shall constitute deletions from the original text.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

**SECTION 1.** The City Council of the City of Port Orange, Florida, hereby amends Chapter 42, Nuisances, Article IV, Noise and Light Regulations, Section 42-79 of the City of Port Orange Code of Ordinances to read as follows:

**Sec. 42-79. Measurement standards classification by use occupancy.**

- (a) For purposes of defining the "use occupancy" all premises containing habitually occupied sleeping quarters shall be considered in residential use. All premises containing transient commercial sleeping quarters ~~shall be considered tourist use.~~ All premises or containing business 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. Hospital, nursing home, school, library, and church uses shall be considered noise sensitive zones.
- (b) - (c) [*Remain unchanged.*]

**SECTION 2.** The City Council of the City of Port Orange, Florida, hereby amends Chapter 42, Nuisances, Article IV, Noise and Light Regulations, Section 42-80 of the City of Port Orange Code of Ordinances to read as follows:

**Sec. 42-80. General restrictions.**

- (a) - (c) [*Remain unchanged.*]
- (d) Vehicle noise is regulated by s. 316.293 of the Florida Statutes, as may be amended from time to time. It shall be unlawful for any person to person to operate a vehicle in a manner as to generate a sound level in excess of the limits established by, or otherwise in violation of, s. 316.293, F.S.
- ~~No person shall operate or be permitted to operate a vehicle at any time or under any condition of roadway grade, load, acceleration or deceleration in such a~~

~~manner as to generate a sound level in excess of the following limit for the category of motor vehicle and applicable speed limit of a distance of 50 feet from the center of the lane of travel:~~

~~(1) For motorcycles other than motor driven cycles:~~

~~Sound level limit, 35 mph or less—78 dBA~~

~~Sound level limit, over 35 mph—82 dBA~~

~~(2) For any motor vehicle of 10,000 pounds or more:~~

~~Sound level limit, 35 mph or less—86 dBA~~

~~Sound level limit, over 35 mph—90 dBA~~

~~(3) For motor driven cycles and any other motor vehicle not included in subsections (1) or (2):~~

~~Sound level limit, 35 mph or less—72 dBA~~

~~Sound level limit, over 35 mph—79 dBA~~

(e) [*Remains unchanged.*]

**SECTION 3.** The City Council of the City of Port Orange, Florida, hereby amends Chapter 42, Nuisances, Article IV, Noise and Light Regulations, Section 42-81 of the City of Port Orange Code of Ordinances to read as follows:

**Sec. 42-81. Specific noises and lights prohibited.**

In addition to the maximum permissible sound or light levels set out in this article, and unless otherwise exempted by this article or by act of the city, the following specific acts, or the causing or permitting thereof, are hereby declared to be in violation of this article:

(1) - (9) [*Remain unchanged.*]

(10) *Motor boats.* Vessel noise is regulated by s. 327.65 of the Florida Statutes, as may be amended from time to time. It shall be unlawful for any person to person to operate a vehicle in a manner as to generate a sound level in excess of the limits established by, or otherwise in violation of, s. 327.65, F.S. ~~Operating or permitting the operation of any boat in any lake, river, stream, canal, bay or other waterway in such a manner as to cause unnecessary and excessive noise within a residential area or noise sensitive zone, or to exceed 85 dBA when measured at least 50 feet from the craft (single incident in any mode of operation~~

(11) - (14) [*Remain unchanged.*]

**SECTION 4.** The City Council of the City of Port Orange, Florida, hereby amends Chapter 42, Nuisances, Article IV, Noise and Light Regulations, Section 42-82 of the City of Port Orange Code of Ordinances to read as follows:

**Sec. 42-82. Exempted noises and lights.**

The following uses and activities shall be exempt from noise level regulations except as listed in section 42-80 and 42-83:

- (1) - (7) [*Remain unchanged.*]
- (8) Those motor vehicles controlled by F.S. § 316.293 noises that are regulated exclusively by the State of Florida and expressly preempt the regulation of such noises by a municipality.
- (9) - (14) [*Remain unchanged.*]

**SECTION 5.** The City Council of the City of Port Orange, Florida, hereby amends Chapter 42, Nuisances, Article IV, Noise and Light Regulations, Section 42-83 of the City of Port Orange Code of Ordinances to read as follows:

**Sec. 42-83. Noise restrictions in an entrainment district – ~~Special permits.~~**

- (a) The following entertainment districts have been created to encourage entertainment activities and shall have special noise restrictions applicable therein. The entertainment districts shall include all property within the entertainment district boundary as depicted in the figures below.

Figure 1 - Riverwalk Entertainment District

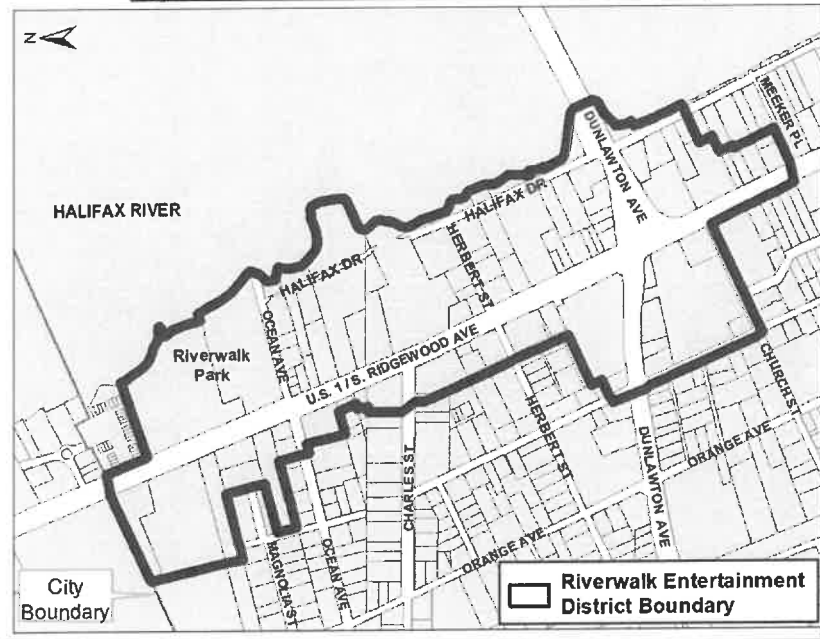


Figure 2 - Down Under Entertainment District

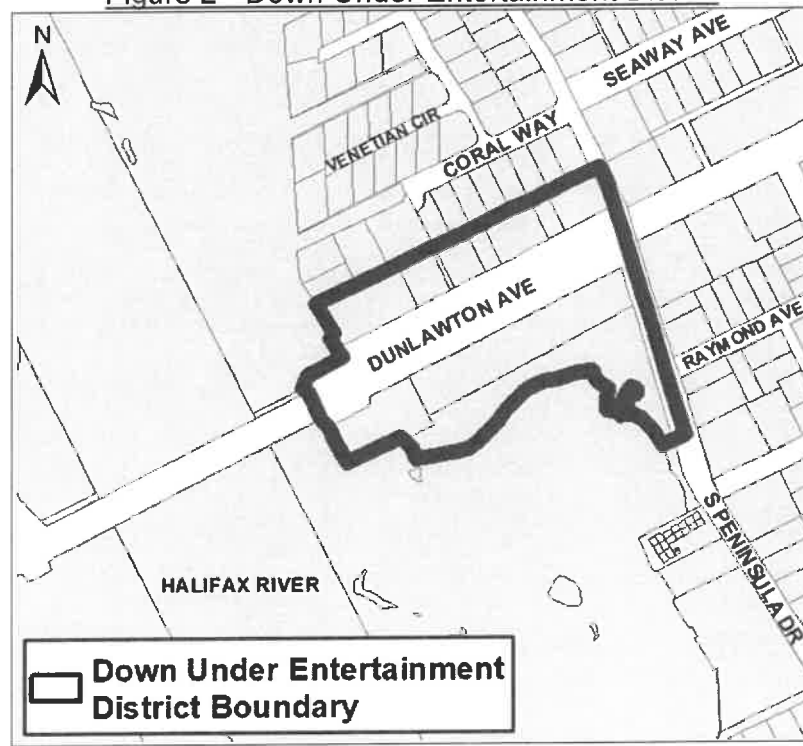
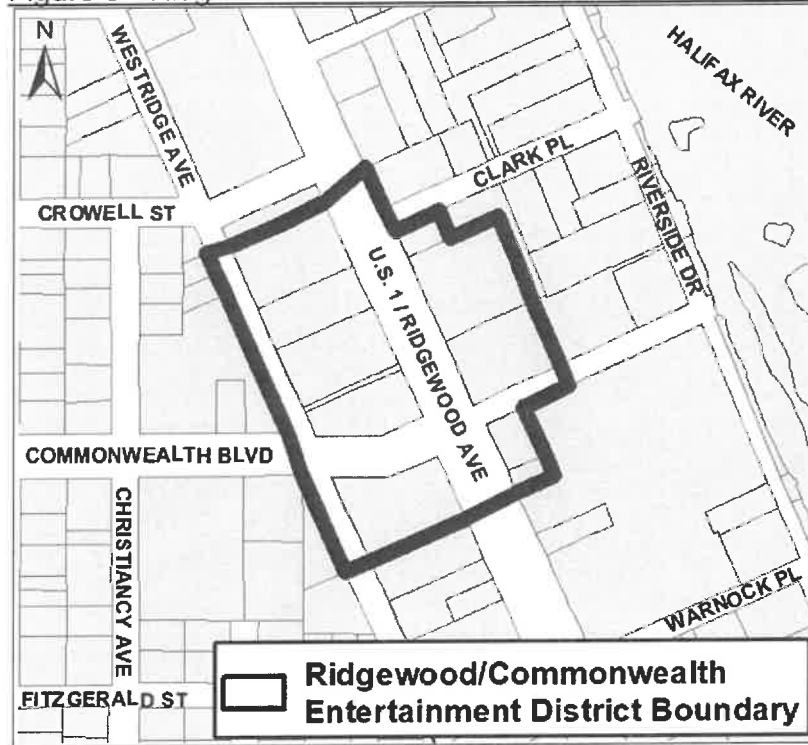


Figure 3 - Ridgewood/Commonwealth Entertainment District



(b) No person shall operate or cause to be operated any source of sound from an entertainment district in such a manner as to create a sound level which exceeds the limits set forth for that entertainment district as shown in table I of this section, when measured at or beyond the property boundary from which the sound emanates. The noise limitations for use occupancies set forth in table of section 42-80 shall not apply to noise emanating from any property located within an entertainment district except as provided herein.

TABLE I – Entertainment Districts

Entertainment District	Time	Sound level limit dBA Sunday - Wednesday	Sound level limit dBA Thursday – Saturday*
Riverwalk	7:00 a.m.—12:00 a.m.	70	80
	12:00 a.m. – 7:00 a.m.	55	55
Down Under	7:00 a.m.—11:00 p.m.	65	75
	11:00 p.m.—7:00 a.m.	55	55
Ridgewood/Commonwealth	7:00 a.m.—11:00 p.m.	65	75
	11:00 p.m.—7:00 a.m.	55	55

\* Applies to the day before a legal holiday, legal holidays or dates of public celebration declared by City Council. For example, if the 4<sup>th</sup> of July is on a Monday, the sound level

limit (dBA) on Sunday, July 3<sup>rd</sup> and Monday, July 4<sup>th</sup> would follow the sound level limit dBA limitations for Thursday – Saturday.

(c) Sound or noise projecting from an entertainment district into a use occupancy as defined in section 42-79(a) of this Article located outside the boundary of an entertainment district shall not exceed the limits set forth for that use occupancy as set forth in table I of section 42-80.

~~Applications for a permit for relief from the maximum allowable noise level limits designated in this article may be made in writing to the city manager or his duly authorized representative. Any permit granted by the city manager hereunder must be in writing and shall contain all conditions upon which the permit shall be effective. The city manager, or his duly authorized representative, may grant the relief as applied for under the following conditions:~~

- ~~(1) The city manager may prescribe any reasonable conditions or requirements as deemed necessary to minimize adverse effects upon the community or the surrounding neighborhood, including use of mufflers, screens or other sound attenuating devices.~~
- ~~(2) Permits for entertainment. Permits may be granted for the purpose of entertainment under the following conditions:
  - ~~a. The function must be open to the public (admission may be charged).~~
  - ~~b. The function must take place on public property.~~
  - ~~c. The permit will be given for only eight hours in one 24 hour day.~~
  - ~~d. The function must be staged between the hours of 9:00 a.m. to 12:00 midnight.~~~~
- ~~(3) Other. Special permits for nonentertainment special purposes may be issued under the following conditions:
  - ~~a. If the special purpose relates to the operation of a trade or business that the special purpose not be in the ordinary course of that trade or business.~~
  - ~~b. 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.~~
  - ~~c. If the special purpose be a recurring purpose that it not recur more often than four times each calendar year.~~
  - ~~d. That the special purpose be absolutely necessary to the operation of the applicant's trade or business.~~
  - ~~e. If the special purpose does not relate to the operation of the trade or business that the special purpose be compatible with the ordinary activities of the neighborhood in which the special purpose is to occur.~~~~

- ~~f. Except in emergency situations, as determined by the city manager, the special permit may be issued for a period of only eight hours between 7:00 a.m. and 12:00 midnight.~~
- ~~g. Special permits may be issued for no longer than 15 consecutive days, renewable by further application to the city manager.~~

**SECTION 5.** The City Council of the City of Port Orange, Florida, hereby amends Chapter 42, Nuisances, Article IV, Noise and Light Regulations, Section 42-83 of the City of Port Orange Code of Ordinances to read as follows:

**Sec. 42-84. Enforcement.**

- (a) The code enforcement officer and police department shall have enforcement responsibility for this article.
- (b) In the case of continuous or recurring violations, the ~~special magistrate code enforcement officer shall~~ may refer the violation to the special magistrate pursuant to section 2-206 et seq.
- (c) In the case of ~~motor vehicle~~ and isolated violations, the police ~~shall issue a notice to appear~~ may issue a citation. ~~pursuant to administrative procedures established for the county courts.~~
- (d) The owner of property, a tenant, a lessee, a manager, an overseer, an agent, corporation, or any other person or persons entitled to lawfully possess or who claims lawful possession of such property at the particular time involved shall be responsible for compliance with this article and each may be punished for violation of this article. It shall not be lawful defense to assert that some other person caused such sound or light, but each lawful possessor or claimant of the premises shall be responsible for operating or maintaining such premises in compliance with this article and shall be punished whether or not the person actually causing such sound or light is also punished.

**SECTION 6.** All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

**SECTION 7.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.



**SECTION 8.** The provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Port Orange and the sections of this Ordinance may be renumbered or re-lettered to accomplish such intention. The code codifier is granted liberal authority to codify the provisions of the Ordinance.

**SECTION 9.** This Ordinance shall become effective immediately upon final passage by the City Council.

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*[Handwritten signature of Mayor Donald O. Burnette]*

MAYOR DONALD O. BURNETTE

ATTEST.

*[Handwritten signature of Robin L. Fenwick]*

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the 7 day of June, 2022.

Passed and adopted on second and final reading on the 21 day of June, 2022.

Reviewed and Approved:

*[Handwritten signature of Matthew J. Jones]*

Matthew J. Jones, City Attorney

[CA3407]