

ORDINANCE NUMBER 2014 - 04

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BRADFORD COUNTY, FLORIDA AMENDING ARTICLE III OF CHAPTER 42 OF PART II OF THE BRADFORD COUNTY CODE OF ORDINANCES TO PROVIDE FOR ENHANCED REGULATION FOR THE CONTROL OF NOISE WITHIN THE UNINCORPORATED AREAS OF BRADFORD COUNTY, FLORIDA; PROVIDING FOR THE ADOPTION AND INCORPORATION OF RECITALS; PROVIDING FOR THE PURPOSE AND AUTHORITY OF THIS ORDINANCE; PROVIDING FOR THE DEFINITION OF TERMS; PROHIBITING BREACH OF THE PEACE AND LIMITING THE UNREASONABLE AND EXCESSIVE LEVELS OF NOISE; PROVIDING FOR EXEMPTIONS; PROVIDING FOR GRANDFATHERING, VESTING AND PRIORITY; PROVIDING FOR THE ISSUANCE OF TEMPORARY NOISE PERMITS; PROVIDING FOR ENFORCEMENT; PROVIDING PENALTIES; PROVIDING SEVERABILITY; PROVIDING FOR THE REPEAL OF INCONSISTENT ARTICLES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Bradford County, Florida has determined a need to more effectively control and abate noise pollution in the unincorporated areas of Bradford County; and

WHEREAS, effectively controlling noise pollution and infractions of the previously-existing noise ordinance has been a recurring issue in Bradford County; and

WHEREAS, protecting and encouraging business, agricultural, and freedom of speech activities serves a legitimate governmental purpose of the Board of County Commissioners of Bradford County, Florida while also protecting the public from excessive noise, particularly in residential areas; and

WHEREAS, the purpose of this ordinance is to provide the public and enforcement officers with a clear delineation of enforcement procedures and with concise guidelines for regulating noise within the unincorporated areas of Bradford County by providing specific prohibited noises, temporary noise permits, grandfathering standards, and determining enforcement responsibilities; and

WHEREAS, the purpose of this ordinance is to provide for an enforcement mechanism which will include a “plainly audible” standard of sound measurement for violating noises; and

WHEREAS, this ordinance shall promote and encourage the citizens and businesses of Bradford County, Florida to comply with the County noise regulations as this Ordinance provides more clarity on infractions, violations, and assessment of penalties; and

WHEREAS, the Board of County Commissioners of Bradford County, Florida hereby finds that the enactment of this ordinance is in the best interest of Bradford County, Florida and its citizens.

NOW THEREFORE, be it adopted and ordained by the Board of County Commissioners of Bradford County, Florida as follows:

Section 1. Adoption and Incorporation of Recitals.

The Board of County Commissioners of Bradford County, Florida adopts the above-outlined recitals and incorporates them herein as part and parcel of this ordinance.

Section 2. Purpose and Authority for Ordinance.

A. This ordinance is adopted for the purpose of providing the public and enforcement officers with a clear delineation of enforcement procedures and with concise guidelines for regulating noise within the unincorporated areas of Bradford County, Florida by providing specific prohibited noises, temporary noise permits, grandfathering standards, and determining enforcement responsibilities and providing for an enforcement mechanism which will include a “plainly audible” standard of sound measurement for violating noises;

B. This ordinance is adopted pursuant to the authority granted by Article II, Section 7 of the *Florida Constitution* which provides that adequate provision shall be made by law for the abatement of “excessive and unnecessary noise.”

C. This ordinance is meant to address excessive and/or loud and raucous noise which disturbs the peace, quiet, and comfort of neighboring inhabitants and to provide a civil remedy for breaches of the peace similar to those as set forth in Section 877.03, *Florida Statutes*, as amended from time to time.

D. It is further the intent of the Board of County Commissioners of Bradford County, Florida to utilize and rely in part on certain language of the Miami-Dade, Florida Code Section 21-28(b) and upheld by *DA Mortgage v. City of Miami Beach and Miami-Dade County*, 486 F.3d 1254 (11th Cir. 2007) and *State v. Davis*, 710 So.2d 635, (5thDCA 1998).

Section 3. Amendment of Bradford County Code of Ordinances.

Article III of Chapter 42 of Part II of the *Bradford County Code of Ordinances* is hereby amended by replacement in its entirety with the following:

Section 42-81. Measurement of Sound.

The measurement of sound or noise under this ordinance shall utilize a “plainly audible” standard, which means audible by a human ear without the benefit of a hearing aid by a reasonable person of ordinary sensibilities. Further, sound or noise shall be measured and enforceable by the law enforcement agency or code compliance office which receives or responds to a complaint, including the Bradford County Sheriff’s Office.

Section 42-82. Definitions for Terms.

For the purpose of this article, the following terms shall have the following prescribed meanings, unless the context clearly indicates otherwise:

A. *Plainly audible* shall mean sounds or noise which can be measured or detected by the human ear without the benefit of a hearing aid by a reasonable person of ordinary sensibilities.

B. *Sound* shall mean something that can be heard; audible.

- C. *Noise* shall mean a sound that annoys or disturbs a human or which causes or tends to cause an adverse psychological or physiological effect on humans; loud or offensive disturbing sounds. This term shall be used synonymously with “sound.”
- D. *Chamber* shall mean the inside of a climate controlled-structure with shared or common walls as with condominiums, townhouses, or apartments.
- E. *Dwelling unit* shall mean a room or rooms connected together, constituting a separate, independent housekeeping establishment for a family, for owner occupancy or rental or lease on a weekly, monthly, or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing sleeping facilities and cooking facilities.
- F. *Unprovoked* shall mean that the complaining witness has been conducting himself or herself peacefully and lawfully and not treating animals in a menacing fashion.
- G. *Animal owner* shall mean any person who owns, possesses, or has custody or control of, gives shelter to, feeds, confines, boards, keeps, houses, or is in charge of or tends to any animal or who permits an animal to remain on or about any premises occupied or controlled by such person.

Section 42-83. Breach of Peace and Excessive and Unnecessary Noises Prohibited.

It shall be unlawful for any person to make, continue, or cause to be made or continued any unreasonably loud, raucous, excessive, unnecessary, or unusual noise. The following acts, among others, are declared to be unreasonably loud, excessive, unnecessary or unusual noises in violation of this ordinance, but this enumeration shall not be deemed to be exclusive, namely:

A. Civil Breach of the peace; disorderly conduct.

Whoever commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a violation of this ordinance.

B. Horns, signaling devices, or similar equipment.

The sounding of any horn or signaling device on any automobile, motorcycle, bus or other vehicle on any street or public place of Bradford County, except as a danger warning; the creation by means of any such signaling device of any unreasonably loud or harsh sound; and the sounding of any such device for any unnecessary and unreasonable period of time.

C. Radios, televisions, recording and playback devices, or sound reproduction equipment.

The using, operating, or permitting to be played, used or operated any radio receiving set, television set, musical instrument, phonograph, recording and playback devices or any other similar devices reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighbors, or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle, chamber or dwelling unit in which such machine or device is operated and who are voluntary listeners thereto. The operation of any aforementioned devices between the hours of 10:00 P.M. until 7:00 A.M. on Sunday through Thursday, 11:00 P.M. and 7:00 A.M. on Friday and Saturday, in such manner as to be plainly audible inside the complainant's

chamber or dwelling unit or at a distance of one hundred (100) feet or more from the source property line shall be prima facie evidence of a violation of this ordinance.

D. Loudspeakers, Sound Amplifiers, and similar equipment on public streets.

The use or operation on or upon the public streets, alleys and thoroughfares anywhere in the County for any purpose of any device known as a sound truck, loud speaker or sound amplifier or radio or any other instrument of any kind or character which emits therefrom loud and raucous noises and is attached to and upon any vehicle operated or standing upon such streets or public places aforementioned which is plainly audible within the chamber or dwelling unit of neighboring inhabitants.

E. Noises to attract attention.

The use of any drum, loudspeaker or other instrument or device for the purpose in whole or in part of attracting attention by creation of any unreasonably loud or raucous noise to any performance, show, sale, display or advertisement of merchandise; the shouting and crying of peddlers, hawkers, and vendors which disturbs the peace and quiet of the neighborhood.

F. Shouting.

Any unreasonably loud or raucous shouting that is plainly audible at a distance of one hundred (100) feet or more.

G. Exhausts.

The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, or motor vehicle, except through a muffler or other

device which will effectively prevent unreasonably loud or explosive noises therefrom is prohibited.

H. Defect in vehicle or load.

The use of any automobile, motorcycle, jet ski, water bike, airboat, recreational vehicle, dirt bike or motor vehicle so out of repair, so loaded or in such manner as to create unreasonably loud or unnecessary grating, grinding, rattling or other noise which is plainly audible within the chamber or dwelling unit of neighboring inhabitants.

I. Airboats.

Noise from airboats, except from sunrise to sunset. Airboats are required to have a working muffler system and shut off engines when on dry ground.

J. Motor vehicles.

Noises from motor vehicles as regulated by Sections 316.272 and 316.293, *Florida Statutes*.

K. Animals.

The owning, harboring, possessing or keeping of any dog, animal or bird which causes frequent, habitual or long continued noise which is plainly audible across the property line of the animal owner, lasting 30 minutes or more while the animal is unprovoked, shall be prima facie evidence of a violation of this ordinance. For purposes of this sub-section, a citation may be issued when two (2) or more complaining witnesses who reside in two different chambers or dwelling unit(s) complete sworn affidavits alleging the disturbance of the peace.

A citation may also be issued when an enforcement officer witnesses the violation. This provision shall not apply to properly zoned, licensed and permitted kennels.

L. Schools, courts, hospitals.

The creation of any excessive, loud or raucous noise within one hundred (100) feet of any school, institution of learning, or court while the same are in use, or adjacent to any hospital, which unreasonably interferes with the workings of such institutions, or which disturbs or unduly annoys the patients in the hospital, provided conspicuous signs are displayed in such streets indicating that said institutions are located on the street.

M. Domestic Power tools and landscaping equipment.

Between the hours of 9:00 P.M. until 7:00 A.M. daily, it shall be unlawful to operate a noise-producing domestic power tool or similar tool which is used to maintain the property or used at a residence, so that excessively loud or raucous noise travels across any residential real property line. All such equipment shall be properly muffled and maintained in working order so as not to create excessive and unnecessary noise.

N. Construction and Industrial Noise.

Commercial, building, construction, road maintenance, utility, solid waste collection, industrial noise or similar noises are permitted after 7:00 A.M. daily until 7:00 P.M. on Monday through Saturday and 9:00 A.M. until 7:00 P.M. on Sundays and holidays, so long as it is not excessively loud or raucous, so as to affect the health, safety or welfare of the neighboring inhabitants within one hundred (100) feet from the source of the noise. Construction and industrial

equipment must be in good repair and utilize noise baffling methods. These types of noises may be further governed by existing Planned Unit Development Agreements (PUD), planning permits, temporary noise permits or other legally binding agreements.

Section 42-84. Exemptions from this Article.

The following uses and activities shall be exempt from noise level regulations as herein described:

- A. Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency. All noises from official public service vehicles or from public service activities, including but not limited to; solid waste collection, utility maintenance, road and bridges construction or repair. Private contractors' vehicles and activities which are doing public service business with Bradford County or other official local governments shall also be exempt. Nothing herein shall be deemed to change any franchise agreement or contract.
- B. Noises of safety signals, warning devices, and emergency pressure relief valves, when utilized for their intended use. This exception shall not apply to safety signals or warning devices for any unnecessary use or unreasonable period of time.
- C. Noises resulting from emergency work necessary to prevent injury to persons or significant damage to property.
- D. Non-amplified crowd noises resulting from activities such as those planned by student, governmental, or community groups, weddings, parades, or racing/sport events.

- E. Noises consistent with cultural, historical, or traditional observances, holidays, and ceremonies. Any other noises resulting from activities of a temporary duration permitted by law and for which a temporary noise permit has been issued by Bradford County, provided the activities shall be in accordance with the conditions and limitations stated on the permit.
- F. All noises coming from the normal operations of aircraft, not including model aircraft, and aircraft ground testing operations, by special authorization of the Keystone Airport Authority.
- G. Any noise, including but not limited to, noise relating to the operation of trains, regulation of which is preempted by the federal government, but only to the extent of such federal preemption.
- H. Noises from all equipment tests required by law, so long as they are conducted between the hours of 8:00 A.M. and 5:00 P.M., and the duration of the test is the minimum recommended by the manufacturer of the equipment. This provision also applies to the testing/exercising of emergency generators.
- I. All commercial agricultural activities, so long as all internal combustion engines are properly muffled. Processing of agricultural products is only exempt if performed on farmlands.
- J. Gun ranges consistent with Section 823.16, *Florida Statutes*, as amended from time to time.
- K. Ferry horns or sirens, church bells, clocks, or bell towers chimes shall be exempt.
- L. The supervised public display of fireworks by fair associations, amusement parks, and other organization or groups of individuals or other lawful use of fireworks.

Section 42-85. Grandfathering; Vesting; and Priority.

Noises or sound levels specifically governed by existing or future Planned Unit Development Agreements (PUD), planning permits or legal settlements shall prevail over otherwise conflicting provisions of this ordinance. Any accused violator of this ordinance shall have an affirmative duty to provide proof of vesting, priority or grandfathering.

Section 42-86. Issuance of Temporary Noise Permits.

The Bradford County Sheriff, or their designee, is authorized to issue a temporary noise permit to allow noise normally prohibited when such noise is produced as in the above described Section 42-83(N), *Construction and Industrial Noise*. Reasonable conditions necessary to minimize any adverse effect upon the health, safety or welfare of the community, may be included in the temporary noise permit. Such temporary noise permits may be issued based upon a finding that there are no reasonable alternatives and the construction has obtained all other required permits. A charge of \$100.00 shall be submitted with applications for a Temporary Noise Permit and changes to the fee schedule are subject to change by Resolution of the Board of County Commissioners. Temporary Noise Permits issued pursuant to such authorization shall not exceed seven (7) calendar days, including weekends and/or national holidays. Violation of a temporary noise permit shall result in revocation and penalties as set-forth in Section 42-88 of this ordinance. At the discretion of the Building Official, a stop work order may also be issued. Material misrepresentation of facts in order to obtain a temporary noise permit shall result in immediate revocation.

Section 42-87. Enforcement of this Article.

- A. This ordinance is enforceable by the enforcement agency which takes the complaint, including the Bradford County Sheriff.

- B. For the purpose of determining and classifying any noise as one which is declared unlawful and prohibited by this ordinance, the enforcement agent shall apply the measurement techniques provided above in Section 42-81 herein to determine if the standards set forth in Section 42-83 herein have been violated.
- C. The following procedures shall be followed by the enforcement agent when enforcing this ordinance:
- i. The appropriate Bradford County enforcement agent shall investigate and determine if any noise is in violation of the specific noise prohibitions provided in Section 42-83 herein.
 - ii. If a noise level is found to be in violation of this ordinance, the appropriate enforcement agent shall give warning to the person responsible for the sound. The warning shall advise the person of the violation and of the possible penalty if the person fails to eliminate the sound or reduce the sound so that it is not plainly audible.
 - iii. The person receiving the warning shall have a reasonable time to comply with the warning. Absent special circumstances, a reasonable time is declared to be fifteen (15) minutes.
 - iv. For the purposes of this ordinance, it is sufficient warning for all prohibited noises if the person responsible for such noise has been warned of, or cited for, one or more offending noises of the same type within the previous sixty (60) days, or in the case of a business, in the time period since ownership of the business changed, whichever is less.
 - v. If the noise is not eliminated or is not reduced to allowable limits within a reasonable time after the warning, or if the noise or sound reoccurs

after warning and abatement, the person so warned and not complying shall be cited for a violation of this ordinance as set forth in subsection D below.

D. Citation procedures.

i. Citation authorization.

Any Bradford County enforcement agent is hereby authorized to issue a citation to a person when, based upon personal investigation, the enforcement agent has reasonable cause to believe that the person has committed a violation of this ordinance.

ii. Procedures.

A citation issued by an enforcement agent shall be in a form prescribed by the County and shall contain:

- a. The date and time of issuance.
- b. The name and address of the person to whom the citation is issued.
- c. The date and time the civil infraction was committed.
- d. The facts constituting reasonable cause.
- e. The number of the section of the ordinance violated.
- f. The name and authority of the enforcement agent.
- g. The procedure for the person to follow in order to pay the civil penalty or contest the citation.
- h. The applicable civil penalty if the person elects to contest the citation.

- i. The applicable civil penalty if the person elects not to contest the citation.
 - j. A conspicuous statement that, if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, he or she shall be deemed to have waived his or her right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty
- iii. Citations to be deposited with the Bradford County Court.
- After issuing a citation, the enforcement agent shall deposit the original and one copy of the citation with the Bradford County Court, by filing same with the Clerk of the Court.
- iv. Judgment of Court.
- If a person fails to pay the civil penalty or request a hearing, fails to appear in court to contest the citation when a hearing has been requested, or fails to appear in court as may be required, the court may enter judgment for an amount not to exceed \$500.00 per infraction and/or may issue a rule to show cause upon the request of Bradford County. The court rule shall require such person to appear before the court to explain why action on the citation has not been taken. If any person who is issued such rule fails to appear in response to the court's directive, the person may be held in contempt of court. At any hearing pursuant to this ordinance, the commission of a violation must be proved

by a preponderance of the evidence. The *Florida Rules of Civil Procedure* and *Florida Evidence Code* shall be applicable.

v. Payment of penalties.

All civil penalties shall be paid to and collected by the Clerk of the Court as provided by law.

vi. Refusal to Sign or Accept Citation.

Any person who willfully refuses to sign and accept a citation issued by an enforcement agent shall be guilty of a misdemeanor of the second degree, punishable as provided in Sections 775.082 or 775.083, *Florida Statutes*.

Section 42-88. Penalties for Violations.

A. Schedule of Penalties.

Any person or persons, firm or corporation, or any agent thereof who violates any of the provisions of this ordinance may upon conviction be guilty of a non-criminal violation punishable as provided for under Section 125.69 and Chapter 162, *Florida Statutes*, as amended from time to time. Violations of this ordinance shall be processed in accordance with Chapter 162, *Florida Statutes*, including, but not limited to, appearance before the Bradford County Special Magistrate or Bradford County Judge. Citations shall be subject to the following penalties:

- i. First citation \$ 53.00;
- ii. Second citation \$118.00;
- iii. Third citation \$268.00; and
- iv. Fourth citation \$500.00 A fourth citation or more shall result in a mandatory appearance in County Court.

- v. A violation for a breach of the peace may be determined by law enforcement to be a second degree misdemeanor violation of Section 877.03, *Florida Statutes*, and may incur a fine not to exceed five hundred dollars (\$500.00).

B. Continuing Violations.

Each day a violation continues subsequent to the issuance of a citation shall constitute a separate violation for which a separate subsequent citation may be issued and an additional penalty may be applied.

C. Flagrant Violations.

Any violation of this ordinance which results in breaches of the peace or is a flagrant disregard of provisions of this ordinance may be determined by a Court of competent jurisdiction to be a civil violation and may incur a fine not to exceed five hundred dollars (\$500.00).

D. Mitigation.

The Bradford County Special Magistrate or County Judge may order a violator of this ordinance to abate the noise produced and take all reasonable steps to mitigate future noise violations, to include, but not limited to, installing sound proofing, screening, fencing, muffling the volume of a device, etc. Reasonable costs of enforcement and administration may also be awarded to Bradford County in conjunction with a penalty fine or mitigation costs.

Section 4. Direction to Staff.

The Board of County Commissioners of Bradford County, Florida directs staff as follows:

- A. Staff is hereby directed to transmit a copy of this ordinance to the Bradford County Sheriff; and

B. Staff is further directed to work together with the Bradford County Sheriff to effectuate the proper, orderly implementation of this ordinance.

Section 5. Severability of Provisions.

If any section, phrase, sentence or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

Section 6. Repeal of Existing and Conflicting Articles.

A. All previous noise ordinances, amendments or parts of ordinances regulating noise are hereby repealed and replaced by this ordinance. Bradford County Ordinance 2006-28 is expressly repealed and replaced by this ordinance.

B. 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. Direction to the Codifier.

It is the intention of the Board of County Commissioners of Bradford County, Florida that Section 3 of this ordinance shall become and be made a part of the *Bradford County Code of Ordinances*, and that the sections and paragraphs of this ordinance may be renumbered or relettered in order to accomplish said intention.


Section 8. Effective Date of Ordinance.

This ordinance shall become effective as provided by Florida general law.

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PASSED AND DULY ADOPTED, with a quorum present and voting, by the Board of
County Commissioners of Bradford County, Florida in regular session, this 2nd day of June 2014.

BOARD OF COUNTY COMMISSIONERS OF
BRADFORD COUNTY, FLORIDA



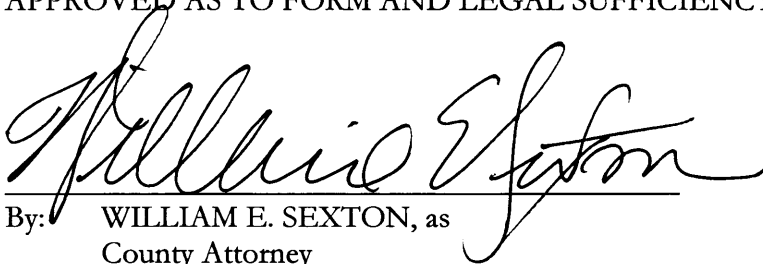
By: DANIEL RIDDICK, its
Chairman

ATTEST:



By: RAY NORMAN, as
Clerk to the Board

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



By: WILLIAM E. SEXTON, as
County Attorney