



BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA

ORDINANCE No. 2315-2015

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY
OF STUART, FLORIDA AMENDING THE CODE OF
ORDINANCES AT CHAPTER 20 BY DEFINING AND
PROVIDING FOR SOUND LEVELS WITHIN THE CITY ~~IN~~
~~CERTAIN—DISTRICTS~~; PROVIDING FOR FINES AND
PENALTIES; REPEALING ALL ORDINANCES IN CONFLICT
HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING
FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE
DATE; AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, the City Commission has determined that the existing sound ordinance is in
need of revision due to recent case law and compliance with the Florida Statutes, as amended;
and

WHEREAS, the City Commission recognizes that sound regulation uniformity and
consistency throughout the City benefits the city, its residents, and the public; and

WHEREAS, there currently exists Section 4-3(c)(2), Stuart City Code, relating to
alcoholic beverage establishments in the Historic Downtown, in which the current sound
ordinance of the City of Stuart, Florida is enforced at all times of the night and day, and the City
Commission desires to repeal it in favor of uniformity for the public and its residents;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE
CITY OF STUART, FLORIDA that:

SECTION 1: The Code of Ordinances of the City of Stuart, Florida, is hereby amended at Chapter 20, Article VI, NOISE, by amending Sections 20-150 through 20-155, to read in their entirety as follows:

ARTICLE VI. - NOISE

Sec. 20-150. - 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:

Amplified sound venue means any facility such as a business, private club, residence, or gathering of persons, whether or not for profit, that provides electronically amplified music, or speech.

Attached business or dwelling unit means two or more businesses or dwelling units that are contiguous and share a common demising wall.

Ambient sound level means the total sound pressure in the area of interest including the noise source of interest.

Background sound level means the total sound pressure level in the area of interest excluding the noise source of interest.

~~*District* means any area described on the map provided in this ordinance as defining an area in which certain maximum sound pressure levels shall pertain.~~

Industrial use means any use or process permitted under section 2.02.05, of the Stuart Land Development Code, but not including amplified sound venues, or the use of electronically amplified sound equipment.

Motor vehicle means, for the purpose of this article, any self-propelled or towed vehicle including, but not limited to, cars, trucks, truck trailers, semi-trailers, campers, motorcycles, motor-driven cycles, mini-bikes, go-carts, golf carts, all-terrain vehicles, dune buggies, swamp buggies, air-cushion vehicles, recreational vehicles, trailers, boat trailers, boats, personal watercraft, airboats, aircraft, and drones.

Noise, as used this article, means any unwanted or unwelcome sound that causes or may cause an adverse psychological or physiological effect on human beings, regardless of its source, which is acoustically, mechanically or electronically produced. It may include, but shall not be limited to sounds emanating or originating from: amplification equipment, such as loudspeakers, sound systems, televisions, radios, and musical instruments; construction equipment, blowers, motors, engines, compressors and other machinery; full size and scale model motor vehicles; and vocalization by domesticated animals, domesticated birds, and by natural persons.

Premises means the lot, parcel, dwelling or business from which any sound originates unless the sound originates from an attached business or dwelling unit. For attached business or dwelling units, including shopping centers, duplexes and triplexes, the term

Premises means the area immediately adjacent to, or between, and within the demising walls of the business or dwelling unit.

Sound means any oscillation in pressure, particle displacement, particle velocity or other physical parameter in a gaseous medium, including air, with internal forces that causes compression and rarefaction of that medium.

Sound level for non-vehicular noise means the flat-weighted sound pressure level measured with slow response using a sound level meter

Sound level meter means a self-calibrating instrument complying with the specification for with a Type 1 or Type 2 self-calibrating commercial sound level meter that meets the ANSI standards for sound level meters by the American National Standards Institute, Inc. (ANSI), or its successor bodies.

Vehicle means any device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

Weekday means Sunday through Thursday (except for city recognized holidays).

Weekend means Friday, Saturday and Holidays recognized by the city; additionally, holiday eves (from 5:00 PM and later) shall be considered the same as holidays.

Sec. 20-151. - Sound regulation.

~~(a)~~ ~~(a)~~ *Vehicles*. For all noise emanating from vehicles, including motor vehicles, the maximum permissible sound level, and all other vehicular noise regulation, shall be that prescribed in Sec. 316.293 and Sec. 403.415, Florida Statutes, as amended from time to time.

~~(a)~~

~~(b)~~ ~~(b)~~ *All other sources of noise*: For all noise, except vehicle noise, the maximum permissible sound levels, at the property line from which the sound originates, shall be 80 decibels from 8:00 AM until 10:00 PM, and 60 decibels from 10:00 PM until 8:00 AM at all times throughout the city.

~~(b)~~ ~~as follows, in the districts shown on Map #20-151:~~

~~(c)~~ ~~DISTRICT~~ ~~TIME~~ ~~dB~~ ~~TIME~~ ~~dB~~ ~~TIME~~ ~~dB~~

Map #20-151

~~(c)~~ *Use of self-calibrating sound level meter authorized*; Measurement of any sound level shall be made using a sound level meter ~~with a Type 1 or Type 2 self-calibrating commercial sound level meter that meets the ANSI standards~~. No court or magistrate shall require any particular user certification in the prosecution of offenses where it can be demonstrated the officer or witness using the sound level meter possesses the

1 general knowledge and ability to accurately use the sound level meter, and the sound
2 meter is self-calibrating, and was self-calibrated prior to its use. If the ambient sound
3 level is less than 3 dBA higher than the background sound level, the source level cannot
4 be derived and violation of the chapter cannot be substantiated.

5 (d) *Location of measurement.* Measurement of any sound with a sound level meter
6 shall be as follows:

7 (1) Non-vehicular noise originating from private property shall be measured at the
8 property line of the property where the noise originates.

9 (2) Non-vehicular noise originating from a public right-of-way or public property
10 shall be measured at a distance of fifty (50) feet from the source of the noise.

11 (e) **Exemptions.** Based upon public emergency, necessity or convenience,
12 reasonable public custom, lack of jurisdiction, or municipal proprietary function, the
13 following uses are exempted from the requirements of subsections (a) and (b):

14 (1) Law enforcement, fire suppression, rescue, and ambulance emergency
15 operations.

16 (2) Holiday fireworks approved, sanctioned or sponsored by a governmental
17 agency.

18 (3) Warning devices at railroads, airports, roadway intersections, and upon
19 hazardous use structures; and the use of horns to warn of a dangerous condition.

20 (4) Burglar alarms and fire alarms.

21 (5) Aircraft and drones in lawful ground or aerial operations.

22 (6) Boats and other watercraft in lawful operations.

23 (7) Chimes or bells used in permitted clock towers, schools, or places of worship
24 or assembly.

25 (8) Amplified sound associated with special events permitted by the city, including
26 but not limited to: cultural and sporting events; artistic performances; ceremonial or
27 traditional activities, including outdoor markets, festivals, speeches, concerts, or
28 shows that have been permitted, approved, sanctioned, or sponsored by the city.
29 Notwithstanding this exemption, the city as the permitting agency, reserves the
30 right to require the operators of such special events to lower the sound pressure or
31 to comply with subsection (b). Nothing contained herein shall be construed as
32 otherwise exempting amplified sound venues from complying with the requirements
33 of subsection (b) without a special event permit.

34 (9) Portable emergency power generators, portable pumps, portable
35 compressors, and similar portable equipment run by a motor or internal combustion
36 engine, used to abate a bona fide emergency condition. Such equipment shall not

emit more than 85 dB sound pressure, off the premises from which it is originating.

(10) Sanitation operations which include the unloading, emptying or collection of any waste or recyclable container, and including the cleaning of authorized grease traps. Such operations shall only be permitted between the hours of 7:00 a.m. and 7:00 p.m. daily.

(11) Landscape, power washing, lawn maintenance or similar temporary equipment operations, including those using truck mounted internal combustion engines, compressors or pumps. Such equipment shall not emit more than 85 dB sound pressure, off the premises from which it is originating.

Sec. 20-152. - Enclosure of certain machinery.

All heating, ventilating, air conditioning (HVAC) equipment, refrigeration equipment, swimming pool pumps, irrigation pumps, generators, or other electric or internal combustion engines, motors, pumps, compressors, and machinery, which emit noise in the operation thereof shall be installed and operated:

(1) Within a primary or accessory building; or

(2) Outside of such building and enclosed within a sound absorbing structure or cabinet with the resulting sound not exceeding the requirements of subsection (b), unless the operation of said machinery without a sound absorbing structure or cabinet otherwise meets the sound pressure levels of subsection (b).

Sec. 20-153. - Outdoor construction and landscape activity; loading or unloading.

As a means of assuring that unlawful noise is curtailed, the following shall be further regulated:

(a1) Outdoor construction, demolition, landscape activities, mechanical operations, and the like, that depend upon the use of mechanical, electric, internal combustion, or air driven tools, equipment and blowers, shall be prohibited between the hours of 7:00 p.m. and 7:00 a.m., except on Sundays and city recognized holidays. On Sundays and city recognized holidays, construction, demolition, landscape activities, and mechanical operations, as stated herein, shall be prohibited, except between the hours of 12:00 noon and 7:00 p.m.

(b2) Outdoor loading or unloading of bulk raw materials or finished goods, in excess of one-half cubic yard (volume) or one-half ton (weight) ("deliveries"), shall be prohibited between the hours of 7:00 p.m. and 7:00 a.m., Monday through Saturday, except on city recognized holidays. On Sundays and city recognized holidays, deliveries as stated herein, shall be prohibited except between the hours of 12:00 noon and 7:00 p.m. This prohibition shall not apply to movers of household goods at a dwelling unit, which shall be prohibited from starting work any earlier than permitted herein, but which may continue beyond 7:00 p.m., until the work is concluded.

Sec. 20-154. - Administrative variance for construction.

In the event of a bona fide emergency, such as a public calamity, storm event, fire, flood, or for the protection of persons and property from imminent danger or destruction, or where it is determined by the city that a certain temporary construction method is more efficient or effective, environmentally beneficial, or serves the public interest, and is preferable to a non-noisy one, the city development director may grant an administrative variance to this ordinance. Said administrative variance shall be for the shortest duration necessary to resolve the emergency or perform the construction, but may be extended or renewed by the city development director for good cause shown.

Sec. 20-155. – Citation; notice to appear; hearing; and local business tax.

In addition to any other penalties or procedures provided in the code of ordinances or provided by law, noise violations may be enforced by the following procedure:

~~A police officer or code enforcement officer may issue a civil citation or notice of violation and notice to appear for violation of this article pursuant to the procedures described herein and in Article II, Chapter 26, Stuart City Code. Violators shall be the owner(s) or tenants of the real property upon which the violation occurs, except that the person actually producing the noise in violation of the code may also be cited separately.~~

~~Each violation shall constitute a separate offense for which a separate fine may be imposed. A person may receive a separate citation once every hour if a violation has occurred at any time within that period. A violation shall be deemed to have occurred on the date that the noise incident occurred. Any violation occurring twelve (12) months following the last violation shall be deemed as a first violation for purposes of fines and penalties.~~

~~Fines assessed by citation and administrative costs, which are not challenged as provided herein, shall be due and payable upon issuance of the citation.~~

~~If a police officer or code enforcement officer has a reasonable belief that an offense is not a first or second offense, or if any person refuses or fails to eliminate a noise violation when required by a police officer or code enforcement officer, such officer is empowered to require the temporary closure of an amplified sound venue or portion thereof, violating this ordinance, and to require that such venue or portion be kept closed, until such time as a hearing may reasonably be had before the city magistrate to determine if a violation existed at the time it was cited. Any such violation which results in the temporary closure of a venue shall be heard by a magistrate within 15 days, or the alleged violator may reopen the venue or portion thereof that was closed at the expiration of 15 days until such time as a magistrate hearing can occur. Upon the request of the violator, at any time during the 15-day period, the City Manager may amend or rescind the closure for good cause shown. Good cause shall not be construed as the loss of business.~~

~~(a)–~~

~~(b)~~—In the event that any person cited or regulated by this article disputes a citation or development order issued by the city, such person shall have ten days from the written rendition of such development order or citation within which to file a notice of request for a hearing before the city magistrate challenging such development order or citation. Such notice must be in writing, filed with the city clerk or designee, and must specify the basis upon which the development order or citation is being challenged.

(a)

~~(c)~~(b) A hearing challenging a development order or citation shall be barred unless filed within the time prescribed in this article.

~~(d)~~(c) All applicants seeking to pay the local business tax within the City shall indicate if they have, or will have, amplified sound at the business. If the applicant has or will have amplified sound, they shall be provided a copy of this ordinance, and shall acknowledge, in writing, receipt of the ordinance.

Sec. 20-156. Fines and penalties; contempt.

(a) Noise is transitory in nature, and once uttered or rendered cannot be undone. Therefore, any violation of this article is determined to be irreparable or irreversible in nature, and shall be subject to the enhanced fine provisions of section 162.09, Florida statutes.

~~(a)~~—

(b) Citations or notices of violation and notices to appear issued pursuant to this article shall be in accordance with the following schedule:

1. If the violation is a first offense, a written warning shall be issued;

~~1.2.~~ If the violation is a second offense, the violator shall pay a fine of \$250.00;

~~2.~~ If the violation is a third offense, the violator shall pay a fine of \$500.00;1

~~3.~~ If the violation is a fourth offense, the violator shall pay a fine of \$1,000.00

3.

~~4.~~ Any violation that is a fifth offense or more shall be subject to a mandatory hearing before the city's code enforcement magistrate, and shall be subject to a fine of not less than \$2,500 or more than \$5,000.

~~5.4.~~

(c) In addition to any fines and costs levied by the magistrate for violation of this ordinance, the magistrate may impose other reasonable sanctions, including but not limited to, restriction of hours of operation of the venue or portion thereof; and restriction of the type, location, and use of amplified sound equipment.

(d) Any person who fails to eliminate a noise violation when required by a police officer or code enforcement officer, or who fails to appear when compelled, may be held in contempt by a magistrate following an order to show cause, and a hearing before the issuing magistrate, and thereafter be subject to an additional fine of up to \$1,000.00, plus administrative costs.

SECTION 2: CONFLICTS. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict. Section 4-3(c)(2) of the Stuart City Code, is specifically repealed.

SECTION 3: SEVERABILITY. If any section, sentence, clause, phrase or word of this ordinance is for any reason declared to be unconstitutional, inoperative or void, such holding shall not affect the remaining portions of this ordinance and the remaining portions shall be deemed and held to be valid.

SECTION 4: CODIFICATION. The operative provisions of this ordinance shall be codified.

SECTION 5: EFFECTIVE DATE. This ordinance shall take effect immediately upon its adoption.

PASSED on First Reading this 9th day of November, 2015.

Commissioner _____ offered the foregoing ordinance and moved its adoption.

The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

KELLI GLASS LEIGHTON, MAYOR
JEFFREY A. KRAUSKOPF, VICE MAYOR
TOM CAMPENNI, COMMISSIONER
TROY MCDONALD, COMMISSIONER
EULA R. CLARKE, COMMISSIONER

YES	NO	ABSENT

ADOPTED on Second Reading this 23rd day of November, 2015.

Ordinance No. 2315-2015
Noise Ordinance (Second Reading)

ATTEST:

CHERYL WHITE
CITY CLERK

KELLI GLASS LEIGHTON
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL
CITY ATTORNEY