

time, any commercial handbills, circulars, dodgers or other off-premises advertising matter, unless a license is obtained as provided in subsection 66-104(3)b.

(Code 1988, § 3-5; Ord. No. 15-54, § I, 7-9-15)

Sec. 38-122. Definitions.

As used in this chapter, unless the context otherwise clearly indicates, the following terms shall mean as indicated in the following:

Automobile means any motor vehicle, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of the State of Florida, used to transport persons or property, and propelled by power other than muscular power.

Handbill means any unsolicited merchandise, advertisements, flyers, dodgers, circulars, leaflets, pamphlets, booklets, magazines, newspapers, newsletters, or any other printed or otherwise reproduced original or copies of any matter or literature.

Private premises shall mean any dwelling, house, building, or other structure, designed or used wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, vestibule, or mailbox belonging or appurtenant to that dwelling, house, building, or other structure.

(Ord. No. 15-53, § I, 7-9-15; Ord. No. 15-54, § III, 7-9-15)

Editor's note—Ord. No. 15-54, § II, adopted July 9, 2015, repealed § 35-122, which pertained to placing or throwing handbills in vehicles and derived from Code 1988, § 3-6. The same ordinance, § III, renumbered §§ 38-123—38-128 as §§ 38-122—127.

Sec. 38-123. Declaration of policy.

It is the policy of the city in keeping with the laws of the United States of America and the spirit of the Constitution of the State of Florida, to promote and balance its concerns for community aesthetics, safety, and littering combined with the right of private owners of property to be left alone and otherwise not have their private

property invaded or littered by those who do not have permission to use it with the guaranteed and inalienable rights of members of the public to express and exercise their rights to free speech and expression on and about private property in certain instances.

(Ord. No. 15-53, § I, 7-9-15; Ord. No. 15-54, § III, 7-9-15)

Note—See editor's note at § 38-122.

Sec. 38-124. Distribution of handbills on private property generally.

(a) *Placement of handbills on private property.* It shall be unlawful for any person to distribute, deposit, place, throw, scatter, or cast any handbill upon any private premises if requested by anyone on those premises not to do so, or if there is placed on the premises in a conspicuous position near the entrance, a sign bearing the words "No trespassing," "No peddlers or agents," "No advertisement," "No solicitation," "No solicitors or peddlers," or any similar notice indicating in any manner that the occupant(s) of the private premises desires to be left alone or to not have his or her right of privacy disturbed or not to have any handbills left upon his or her premises.

(b) *Manner of placement of handbills on private property.* It shall be unlawful for any person to distribute, deposit, place, throw, scatter, or cast any handbill in or upon any private premises which are inhabited except by handing or transmitting such handbill directly to the owner, occupant, or any other person then present in or upon the private premises who consents to such distribution; provided, that in the case of inhabited, private premises which are not posted as provided in subsection (a), such person, unless requested by anyone upon the premises not to do so, may place or deposit the handbill in or upon the inhabited private premises, so long as the handbill is so placed or deposited as to secure or prevent it from being blown or drifted about the premises or elsewhere and such placement or deposit does not damage or otherwise cause material interference with the premises as is or should be apparent to a reasonable person, except that mailboxes may not be used for distribution when prohibited by federal postal laws or regulations.

(c) *Placement of handbills on vacant private premises.* Notwithstanding the preceding provisions, it shall be unlawful for any person to distribute, deposit, place, throw, scatter, or cast any handbill in or upon any private premises where it is or should be readily apparent to a reasonably prudent person that the property is uninhabited or has been otherwise vacant for a substantial period of time.

(d) *Accumulation of litter.* It shall be unlawful for any person to distribute, deposit, place, throw, scatter, or cast any handbill in or upon any private premises where it is or should be apparent to a reasonable person that any previous day's distribution of any such material has not been removed or such distribution or deposit results in an excessive accumulation of handbills that is or should be apparent to a reasonable person.

(e) *Placement of handbills on vehicles.* It shall be unlawful for any person to place, deposit, throw, or affix in any manner any handbill, sign, poster, advertisement, pamphlet, leaflet, or handbill into or onto any automobile or other vehicle on any public property or on any parking lot open to the use of the public, unless he or she [is] the owner thereof or unless he or she has first secured the consent of the owner thereof. Notwithstanding the foregoing, this subsection shall not prohibit the handing, transmitting, or distributing of any handbill to the owner or other occupant of a vehicle who is willing to accept it. (Ord. No. 15-53, § I, 7-9-15; Ord. No. 15-54, § III, 7-9-15)

Note—See editor's note at § 38-122.

Sec. 38-125. Exemptions.

The provisions of this chapter shall not apply to the regular delivery of newspapers, magazines, or other similar materials which have been subscribed to by the persons receiving them or by occupants of the residence to which they are delivered whereby consent to receive such items has been given or by the distribution of mail by the United States Government. Notwithstanding the preceding, the exempted materials referenced herein shall still be subject to the manner of placement provisions set forth in section 38-125(b) relating to placement or deposit-

ing so as to secure such materials in a manner that does not damage or otherwise cause material interference with the premises.

(Ord. No. 15-53, § I, 7-9-15; Ord. No. 15-54, § III, 7-9-15)

Note—See editor's note at § 38-122.

Sec. 38-126. Variances.

The city commission may, by written resolution, grant variances from the provisions of this chapter to permit the distribution of handbills as otherwise prohibited, upon such terms and conditions as the city commission may impose, after due consideration of the following:

- (1) The nature, scope, method, and times of distribution;
- (2) The extent of the distribution, both as to time required and area to be covered;
- (3) The date or dates on or between which the distribution is to be accomplished;
- (4) The approximate number of individuals who will be engaged in the distribution;
- (5) The provision for removal by the individual or organization proposing the distribution of items not removed by the property owner within a reasonable period of time following the distribution; and
- (6) The likelihood, or lack thereof, of the distribution constituting a real and present danger to the public health, safety, and welfare.

(Ord. No. 15-53, § I, 7-9-15; Ord. No. 15-54, § III, 7-9-15)

Note—See editor's note at § 38-122.

Sec. 38-127. Enforcement.

In the event that a violation of this article has occurred or is occurring, the city shall have the right to one or more of the following remedies or actions after an initial verbal warning:

- (1) *Code enforcement proceedings.* The city may initiate a code enforcement proceeding against the person(s) or entities in violation of this article. A violation may be prosecuted as a violation of an itinerant or transient nature and one that is

irreparable and irreversible. Notwithstanding the foregoing, any person who violates the provisions of this chapter shall be entitled an initial warning prior to initiation of code enforcement proceedings.

- (2) *Civil citation.* A civil citation may be issued against the person(s) or entities in violation as set forth in chapter 2 of this Code. The city's law enforcement officers or code enforcement officers are authorized to issue notices to appear to the violator(s). An initial violation of this chapter shall result in an initial warning. A subsequent or repeat violation occurring within a period of one year from the date of the initial warning shall be punishable as a Class I violation as set forth in chapter 2 of this Code. Additional violations occurring within a period of one year from the date of the previous violation shall be punishable as the classification penalty that corresponds with the number of subsequent or repeat violations, which shall not exceed class V.
- (3) *Criminal penalty.* The city may prosecute the violator for a criminal misdemeanor punishable by a fine not exceeding \$500.00 or imprisonment for a term not exceeding 60 days, or by both such fine and imprisonment in the discretion of the court. Notwithstanding the foregoing, any person who violates the provisions of this chapter shall be entitled [to] an initial warning prior to initiation of any criminal proceedings.
- (4) *Other remedies.* The city may institute any appropriate action at law or in equity to bring about compliance or remedy, including but not limited to, instituting an action in court to enjoin violating actions, in which case the violating person(s) or entity shall be liable to the city for reimbursement of the city's attorneys' fees and costs concerning such action. Notwithstanding the foregoing, any person who violates the provisions of this chapter shall be entitled [to] an

initial warning prior to initiation of any other remedies as authorized in this subsection.

(Ord. No. 15-53, § I, 7-9-15; Ord. No. 15-54, § III, 7-9-15)

Note—See editor's note at § 38-122.

Sec. 38-128—150. Reserved.

ARTICLE IV. NOISE*

Sec. 38-151. Scope.

This article shall be effective throughout the city limits.

(Code 1988, § 11-48)

Sec. 38-152. Purpose.

The purpose of this article is to prevent and prohibit excessive and unnecessary noise and provide for the abatement of excessive and unnecessary noise in order to protect the health, safety and general welfare of people in the city and to restrict excessive unnecessary noise throughout the city.

(Code 1988, § 11-49; Ord. No. 05-36, § 2, 7-14-05)

Sec. 38-153. Terminology, standards and definitions.

(a) *Terminology and standards.* All technical acoustical terminology and standards used in this article which are not defined in subsection (b) of this section shall be read or construed in conformance with applicable publications of the American National Standards Institute, Inc. (ANSI), or its successor body.

(b) *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-weighted sound pressure level means the sound pressure level, in decibels, as measured on

***Cross references**—Use of loudspeakers or sound equipment at adult entertainment establishments, § 10-103; performance standards for noise, § 118-1339.

a sound level meter using the A-weighting network. The level so read shall be designated as _____ dB(A) or _____ dBA.

Ambient noise level means the sound pressure level of the all-encompassing noise emanating from a given environment, usually being a composite of sounds from many sources.

Amplified sound equipment means electronic or other equipment that projects or transmits music, sound waves, vibration or speech, including but not limited to, a loudspeaker, megaphone, amplifier or public address system.

Commercial use means uses allowed under the zoning designations of PCD, C-1, C-2, and C-4.

Construction means any site preparation, assembly, erection, substantial repair, alteration, or similar action, for or on public or private thoroughfares, structures, utilities or similar property.

Decibel or dB means a unit for measuring the volume of sound; it is a logarithmic (dimensionless) unit of measure used in describing the amplitude of sound.

Demolition means any dismantling, destructing, razing or removal of structures, utilities, public or private thoroughfare surfaces, or similar property.

Device means a mechanism which is intended to produce or which actually produces noise when operated or handled.

Emergency means any occurrence or circumstance involving actual or imminent physical death or trauma or property damage, demanding immediate emergency work or service. It shall be the burden of the alleged violator to prove the "emergency".

Emergency vehicle means a motor vehicle, boat or aircraft used in response to an emergency. Such vehicles include, but are not limited to, police vehicles, fire and rescue vehicles, and ambulances.

Fluctuating noise means the sound pressure level of noise varying more than six dB(A) during the period of observation when measured with

the slow meter characteristic of a sound level meter. It does not equal the previously existing ambient noise level more than once during the period of observation.

Impulsive sound means a sound of short duration, usually less than one second and of high intensity, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts, the barking of dogs, and the beating of drums.

Industrial use means uses allowed under the zoning designation I-1 or I-2.

Level, day-night (Ldn) means a 24-hour average of the A-weighted sound pressure level, with the levels during the period of 10:00 p.m. to 7:00 a.m. increased by ten dB(A) before averaging.

Motor vehicle means any vehicle defined as a motor vehicle by F.S. § 320.01(1), including but not limited to, passenger cars, trucks, truck trailers, semitrailers, campers, motorcycles, minibikes, go-carts, amphibious craft on land, dune buggies, and racing vehicles which are propelled by mechanical power.

Motorboat means any vehicle which is primarily operated on water or which does operate on water, such as boats, barges, amphibious craft, or hover craft, and which is propelled by mechanical power.

Muffler means any apparatus consisting of baffles, chambers, or acoustical absorbing material whose primary purpose is to transmit liquids or gases while causing a reduction in sound emission at one end.

Multifamily residential dwelling means a building designed or used exclusively for residential occupancy by two or more families.

Multifamily residential dwelling unit means the portion of a multifamily residential dwelling designed or used exclusively for residential occupancy by only one family.

Noise means any sound produced in such quantity and for such duration that it annoys, disturbs, endangers or injures the comfort, repose, health, peace, or safety of a reasonably prudent

person of ordinary sensibilities, and also includes sounds at or above decibel levels as specifically prohibited by this article.

Noise-sensitive zone means a quiet zone which is open or in session, and which is demarcated by conspicuous signs identifying it as a quiet zone. Noise-sensitive zones may be established only for schools, public libraries, churches, hospitals, and nursing homes. These zones are to be established as approved by the city commission.

Office use means uses allowed under the zoning designation C-3.

Period of observation means the time interval during which acoustical data and facts are obtained.

Person means any natural person, individual, association, partnership, corporation, municipality, governmental agency, business trust, estate, trust, two or more persons having a joint or common interest or any other legal entity and includes any officer, employee, department, agency or instrumentality of the United States, a state or any political subdivision of a state or any other entity whatsoever or any combination of such, jointly or severally.

Police department means the city police department and each officer thereof.

Powered model vehicles means any powered vehicles, either airborne, waterborne or landborne, which are designed not to carry persons or property, such as, but not limited to, model airplanes, boats, cars, rockets, and which are being propelled by mechanical means.

Property line means an imaginary line along the surface of land or water, and its vertical plane extension, which separates the real property owned, rented or leased by one person from the real property owned, rented or leased by another person.

Public right-of-way means any street, avenue, boulevard, highway, sidewalk, alley, or similar place normally accessible to the public which is owned or controlled by the city, county, state or federal government.

Pure tone means any sound which can be distinctly heard as a single pitch or a set of single pitches. For the purposes of measurement, a pure tone shall exist if the one-third octave band sound pressure level in the band with the tone exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by five dB for center frequencies of 500 Hz and above and by eight dB for center frequencies between 160 and 400 Hz and by 15 dB for center frequencies less than or equal to 125 Hz.

Receiving land use means the use of the land which is receiving the sound or noise as designated by the City of Winter Garden Zoning Map (and for recently incorporated areas, the effective zoning category).

Residential use means uses allowed under a zoning designation of R-1A, R-1, R-2, R-3, R-NC, and planned unit development.

RMS sound pressure means the square root of the time averaged square of the sound pressure.

Single-family residential dwelling means a detached dwelling containing complete housekeeping facilities for only one family, designed for or occupied exclusively by one family for usual domestic purposes, and having no enclosed space or cooking facilities or sanitary facilities in common with any other dwelling.

Single-family residential dwelling lot means the parcel of land upon which a single-family residential dwelling is located.

Sound means an oscillation in pressure, stress, particle displacement, particle velocity or other physical parameter, in a medium with internal forces. The description of sound may include any characteristic of such sound, including duration, intensity, and frequency.

Sound level means the weighted sound pressure level obtained by the use of a metering characteristic and weighting A, B, or C as specified in American National Standards Institute specifications for sound level meters (ANSI S1.4-1971), or successor publications. If the weighting employed is not indicated, the A-weighting shall apply.

Sound level meter means an instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter, and weighting network used to measure sound pressure levels. The output meter reads sound pressure level when properly calibrated. The instrument is of type 2 or better, as specified in the American National Standards Institute publication entitled "Specifications for Sound-Level Meters," designated as ANSI S1.4-1971, or successor publication.

Sound pressure means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by the presence of sound energy.

Sound pressure level means 20 times the logarithm to the base 10 of the ratio of the RMS sound pressure to the reference pressure of 20 micronewtons per meter squared. The sound pressure level is denoted L_p or SPL and is expressed in decibels.

Steady noise means a sound pressure level which remains essentially constant during the period of observation, i.e., the fluctuations are too small to meet the criteria for fluctuating noise. (Code 1988, § 11-50; Ord. No. 05-36, § 3, 7-14-05; Ord. No. 12-28, § III, 6-14-12; Ord. No. 12-33, § I, 6-28-12)

Cross reference—Definitions generally, § 1-2.

Sec. 38-154. Findings of fact.

(a) Excessive and unnecessary noise interferes with the quality of life and the health, safety and general welfare of the public.

(b) In particular, excessive and unnecessary noise can and does cause adverse psychological and physiological effects in humans, inefficiency, accidents and other undesirable and dangerous conditions.

(c) A substantial body of science and technology exists by which noise may be measured and substantially abated.
(Code 1988, § 11-51)

Sec. 38-155. Prohibited acts.

(a) It shall be unlawful for any person to produce, cause to be produced, allow to be produced or project, by any means, any sound or noise across a property line in such manner as to create a sound level which exceeds the limits set forth for the receiving land use listed in section 38-156 when measured at or within the property line of the receiving property. For any activity or use of land or buildings not expressly listed in the zoning districts in the city, the city commission, upon notice to the owner or occupant of the property producing sound, may determine the category of use under this article for which the activity or use is to be considered. Notwithstanding the foregoing, the existence of a noise which relates to the receiving land use listed in section 38-156 may be determined by the city's law enforcement officers, code enforcement officers, code inspectors, and/or their agents pursuant to section 38-160(a)(1).

(b) Notwithstanding any violation of subsection (a) above, the following specific uses, activities and circumstances are declared to be in violation of this article:

- (1) *Radios, television sets, exterior loudspeakers, musical instruments, and similar devices.* Operating or permitting the use or operation of any radio receiving set, exterior loudspeaker, amplified sound equipment, musical instrument, phonograph, television set, or other machine or device for the production or reproduction of sound in such a manner as to create a noise across the boundary of the property, including, without limitation, public and private rights-of-way from which the noise originates. In addition to the preceding, radios, cassette players, disk players and similar devices associated with motor vehicles or motorboats, shall not be operated or amplified in such a manner as to be felt or clearly heard at 25 feet or more from such device, when operated or parked on a public or private right-of-way or public or private space. In determining whether such devices may be clearly heard, the city's law enforcement officers, code enforcement officers, code inspectors, and/or

their agents must utilize their normal auditory senses without any enhancements or hearing aids. Particular words or phrases or the name of any song or artist are not required to be identified. The detection of a rhythmic bass reverberating sound shall be sufficient to determine if a violation has occurred. To the extent that the Florida Uniform Traffic Control Law provisions regulate noise originating from within public or private rights of way, those provisions shall apply where currently existing or as amended.

- (2) *Construction equipment and activity.* Operating or causing to be operated any equipment or performing any outside activity in furtherance of construction, repair, alteration or demolition work on buildings, structures, roads, or projects within the city except between the hours of 7:00 a.m. and 9:00 p.m. Monday through Friday and between the hours of 9:00 a.m. and 9:00 p.m. on Saturday, excluding all legal, state, and nationally recognized holidays. A variance may be obtained as set forth in this article from the city for such construction or repair work outside of such hours.
- (3) *Engine mufflers.* Operation of any internal combustion engine, including but not limited to an engine associated with a motor boat, or motor vehicle without a muffler or other effective sound-dampening device which functions as designed by the manufacturer muffler or other effective sound-dampening device, which prevents loud or explosive noise therefrom.
- (4) *Motor vehicle, motorcycle or motorboat repair in residential areas.* Repairing, rebuilding, modifying or testing any motor vehicle, off-road vehicle, or motorboat within or abutting any residential land use designation in such a manner as to create noise across the boundary of the property, including without limitation, public and private rights-of-way from which the noise originated between the hours of 9:00 p.m. and 7:00 a.m.