

- (5) *Activities in the vicinity of schools, courts, churches, and hospitals.* Creating sound on any street adjacent to any school, court, church, or hospital which sound constitutes a noise as perceived from the interior of such institution.
- (6) *Peddlers, hawkers, or vendors.* It shall be unlawful for peddlers, hawkers, or vendors to shout or cry along or on a roadway in such a manner as to create noise on property outside the right-of-way.
- (7) *Drums, cymbals, and amplified sound equipment.* Creating, making, or maintaining any sound by the use of any drum, cymbals, amplified sound equipment, or other similar instruments in the city for the purpose of attracting attention to any performance, show, sale, or display of merchandise, or place of business so that a noise is projected across the boundary of the property from which the noise originates.
- (8) *Bells or sirens on vehicles.* Using, in connection with an unauthorized vehicle, any bell or siren similar to that used on ambulances or vehicles of the police, fire departments, and other public safety agencies.
- (9) *Skateboard ramps.* Using any skateboard ramp or similar configuration for skateboarding or rollerblading between 9:00 p.m. and 7:00 a.m. in a residential land use designation in a manner that results in noise across the boundary of the property from which the noise originates.
- (10) *Air blow or vacuum cleaners.* Operating any air-blow or vacuum cleaning equipment or similar devices for the cleaning of parking lots, walkways, driveways, or similar areas between the hours of 9:00 p.m. and 7:00 a.m. that results in noise across the boundary of the property from which the noise originates.
- (11) *Places of public entertainment.* It shall be unlawful for any public entertainment establishment or person associated with or working for said establishment to operate, play or permit the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to create a noise across the boundary of the property from which the noise originates.
- (12) *Landscape maintenance.* Undertaking landscape maintenance activities in such a manner as to create noise across the boundary of the property from which the noise originates between the hours of 9:00 p.m. and 7:00 a.m. Golf courses engaged in the regular maintenance of greens, fairways, practice areas, etc. are exempt from this provision.
- (13) *Powered model vehicles.* Operating or permitting the operation of powered model vehicles in such a manner as to create noise across the boundary of the property from which the noise originates between the hours of 9:00 p.m. and 7:00 a.m.
- (14) *Animal noises.* It shall be unlawful for the owner or custodian of any animal to permit such animal to habitually bark, whine, howl, squawk, screech, bray, crow or cause any other noise which constitutes a noise experienced across the boundary of the property from which the noise originates.
- (15) *Loading docks.* It shall be unlawful for any commercial or industrial establishment to engage in any loading or unloading of equipment or merchandise from a vehicle between the hours of 9:00 p.m. and 7:00 a.m. where such activity results in a noise being generated across the boundary of the property from which the noise originates onto property occupied for residential purposes.
- (16) *Activities within the vicinity of sleeping quarters.* Actions or activities between the hours of 11:00 p.m. and 7:00 a.m. resulting in transmission of a sound across the boundary line of the property where the actions or activities occurs such that the

sound constitutes a noise as perceived from within the interior of a building used for residential or lodging purposes.

(Code 1988, § 11-47; Ord. No. 05-36, § 4, 7-14-05; Ord. No. 12-33, § II, 6-28-12; Ord. No. 13-18, § I, 4-11-13)

### **Sec. 38-156. Maximum permissible sound level limits.**

(a) The following applicable sound level limits are established for the following applicable times when measured at or within the property lines of the following applicable receiving land use categories:

<i>Receiving Land Use Designation</i>	<i>Time</i>	<i>Sound Level Limit (dBA)</i>
Single-family residential dwelling lot, parcel, or area; any other lot, parcel or area zoned for residential use except a multifamily residential dwelling unit; any noise-sensitive zone	7:00 a.m.—9:00 p.m. 9:00 p.m.—7:00 a.m.	60 55
Multifamily residential dwelling unit	7:00 a.m.—9:00 p.m. 9:00 p.m.—7:00 a.m.	55 45
Lot, parcel or area zoned for office use	7:00 a.m.—9:00 p.m. 9:00 p.m.—7:00 a.m.	75 70
Commercial other than office use	7:00 a.m.—9:00 p.m. 9:00 p.m.—7:00 a.m.	75 70
Industrial	7:00 a.m.—9:00 p.m. 9:00 p.m.—7:00 a.m.	75 70
Agricultural	7:00 a.m.—9:00 p.m. 9:00 p.m.—7:00 a.m.	75 70

(b) Any source of sound which emits a pure tone or is characterized as an impulsive sound will reduce by five dBA the sound level limits set forth in subsection (a) of this section.

(c) To the extent other sections of this article allow sounds at levels that exceed the sound level limits and times specified in the above chart, the other sections of this article control.

(Code 1988, § 11-52; Ord. No. 05-36, § 5, 7-14-05; Ord. No. 12-33, § III, 6-28-12)

### **Sec. 38-157. Sound measurement.**

Except as may otherwise be provided in section 38-155(b), sound measurements taken under this article shall be made with a sound level meter.

Recorded measurement shall be taken so as to secure and ensure an accurate representation of the sound. All periods of observation made hereunder shall be determined with regard to the character of the noise being measured and the particular instrument used to make the measurement.

(Code 1988, § 11-53; Ord. No. 05-36, § 6, 7-14-05)

### **Sec. 38-158. Exceptions.**

(a) The following noise and sounds are exempt from this article:

- (1) Noise and sounds caused by or related to emergency vehicles, equipment, and personnel during emergencies, which shall be deemed to include all work made necessary by an emergency to restore property to a safe condition, all work made necessary by an emergency to restore public utility service and all work made necessary by an emergency to protect persons or property from imminent injury, death, or substantial harm.
- (2) Noise and sounds produced by city, county, state, and federal government vehicles, equipment and personnel during the pursuit of official duties of the respective governments, including but not limited to public works construction and maintenance, authorized safety signals, warning devices and emergency testing.
- (3) Noise and sounds produced by public utility vehicles, equipment and personnel during the pursuit of the public duty of such public utility.
- (4) Noise and sounds produced by activities or events approved by the city commission where the person responsible for such activities or events obtains the city commission's approval after such person clearly and expressly has advised the city commission that the noise or sounds associated with the activities or events would be in violation of this article but for this exemption.
- (5) Noise and sounds produced between the hours of 7:00 a.m. and 9:00 p.m. by the

mowing of grass; the operation of other yard maintenance equipment; the construction of properly permitted buildings, structures and other improvements; and the operation of farm equipment during farming activities.

- (6) Railway locomotives and railway cars.
  - (7) Aircraft and airport activity conducted in accordance with federal laws and regulations.
  - (8) Motor vehicles operating on a public right-of-way subject to F.S. § 316.293 or other provisions of the Florida Uniform Traffic Control Law that regulate noise and sounds originating from within public or private right-of-way where currently existing or as amended.
  - (9) Organized athletic contests.
  - (10) Noise and sounds produced from churches between the hours of 7:00 a.m. and 10:00 p.m.
  - (11) Community events, such as fairs, school activities, community festivals and the like which do not extend their activities beyond 11:00 p.m. or commence before 7:00 a.m. Any community activity which extends beyond 11:00 p.m. or commences before 7:00 a.m. and would otherwise violate this article must apply for and receive prior approval from the city.
  - (12) Noise and sounds produced by an electrical generator during a time period in which regular electrical utility service is temporarily unavailable to the property upon which the generator is located.
  - (13) Noise and sound associated with uses or activities for which a variance has been obtained from the city approving such noises and sounds contrary to the restrictions of this article.
- (b) To the extent any portion of this article covers a matter covered by F.S. § 403.415, the Florida Motor Vehicle Noise Prevention and Control Act of 1974, or any other provisions of the Florida Uniform Traffic Control Law, the provisions of this article covered by such act or law

shall be of no effect. For matters not covered by the act or law, all of the sections of this article are in full force and effect. Additionally, any violation of such act within the city shall be a violation of this article, and such violation may be penalized and such act may be enforced through the enforcement provisions of this article and this Code. (Code 1988, § 11-54; Ord. No. 05-36, § 7, 7-14-05; Ord. No. 13-18, § II, 4-11-13)

#### **Sec. 38-159. Conflicts in restrictive standard.**

If this article and section 118-1339 provide for different maximum noise levels, the more restrictive maximum level shall apply. If the noise levels (maximum sound pressure level) in section 118-1339 cannot be enforced or measurement of such levels is difficult, unduly burdensome or impossible, the sound level limits in this article shall control.

(Code 1988, § 11-55)

#### **Sec. 38-160. Enforcement.**

(a) *Determination of violations.* The city's law enforcement officers, the city manager, code enforcement officers, code inspectors, and their agents are empowered to investigate any situation where a person is alleged to be violating section 38-155, section 38-156 or the terms of any variance. These individuals shall have authority to issue citations for all violations of this article. If any of these individuals encounters a circumstance which reasonably indicates that a person is violating a provision of section 38-155 or 38-156, the following standards shall apply depending upon the provision alleged to have been violated:

- (1) *Violations of section 38-155(a).* If a violation of section 38-155(a) is alleged, a sound level pressure test may be utilized to establish the violation. The city may, through agreement with other local governments or other entities, provide for the measurement of sound and noise and for the performance of sound level pressure tests and other matters as such may be used in the enforcement of this article and the enforcement of section 118-1339. Additionally, the city's law enforcement officers, the city manager, code enforcement officers, code inspectors, and/or their

agents, may assess whether a particular sound constitutes a noise as to the receiving land use listed in section 38-156. In assessing whether a noise has been or is continuing to be created, the investigating agent shall investigate the matter and be entitled to rely on his or her observations, witness statements, and any other evidence available. In determining whether a sound constitutes a noise, the investigating agent shall objectively evaluate the alleged noise by considering several environmental and contextual factors, including, but not limited to, the criteria set forth in section 38-160(a)(2)(i)—(ix), inclusive.

- (2) *Violations of section 38-155(b).* If a violation of section 38-155(b) is alleged, then the city's law enforcement officers, the city manager, code enforcement officers, code inspectors, and/or their agents, in assessing whether a noise has been or is continuing to be created shall investigate the matter and be entitled to rely on their observations, witness statements, and any other evidence available. In determining whether a sound constitutes a noise, the investigating agent shall objectively evaluate the alleged noise by considering several environmental and contextual factors, including, but not limited to, the following:
  - (i) The intensity of the alleged noise.
  - (ii) The duration of the alleged noise.
  - (iii) The relationship of the alleged noise to the intensity of background or ambient sounds, if any.
  - (iv) The uses permitted within the zoning district in which the alleged noise emanates or emanated and the uses permitted within zoning districts that lie within 500 feet of the source of the alleged noise.
  - (v) The time of the day or night at which the alleged noise occurs.
  - (vi) The proximity of the alleged noise to facilities customarily utilized for sleeping purposes.

- (vii) Whether the alleged noise is continuous or impulsive.
- (viii) The existence of additional complaints concerning the alleged noise from additional persons who claim to be affected by the alleged noise.
- (ix) Whether the alleged noise is due to natural occurrences or human-made activities.

(b) *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:

- (1) *Code enforcement proceedings.* The city may initiate a code enforcement proceeding against the person(s) or entities in violation and/or the property owner of the real property where the violation occurs. A violation of this article may be prosecuted as a violation of an itinerant or transient nature and one that is irreparable and irreversible.
- (2) *Civil citation.* A civil citation may be issued against the person(s) or entities in violation as set forth in chapter 2 of the Winter Garden Code of Ordinances. The city's law enforcement officers or code enforcement officers are authorized to issue notices to appear to the violator(s).
- (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.
- (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.

(Code 1988, § 11-56; Ord. No. 05-36, § 8, 7-14-05; Ord. No. 12-33, § IV, 6-28-12)

**Sec. 38-161. Penalty.**

A violation of section 38-155 or 38-156, or the terms of any variance granted pursuant to section 38-165 shall be classified as class 2 violations under division 3, article II, chapter 2, part II of this Code. Otherwise, penalties for a violation of section 38-155 or 38-156 are as set forth in section 38-160. A violation of the terms of any variance granted pursuant to section 38-165 shall be subject to the enforcement procedures provided set forth in chapter 2 of the Winter Garden Code of Ordinances pertaining to code violations.

(Code 1988, § 11-57; Ord. No. 05-36, § 9, 7-14-05; Ord. No. 12-33, § IV, 6-28-12)

**Sec. 38-162. Other remedies.**

The city commission or any substantially affected person may bring suit in the circuit court of the county to restrain, enjoin, or otherwise prevent the violation of this article. Nothing con-



tained in this article shall prevent or restrict the city from taking such other lawful actions in any court of competent jurisdiction as is necessary to prevent or remedy any violation or situation of noncompliance. Such other lawful actions may include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. All remedies and penalties provided for in this article shall be cumulative and independently available.

(Code 1988, § 11-58; Ord. No. 05-36, § 10, 7-14-05)

### **Sec. 38-163. Liability of enforcement officer.**

The police department, the environmental protection officer, the city and their agents are immune from prosecution, civil or criminal, for reasonable, good faith trespass upon private property while in the discharge of duties under this article. (Code 1988, § 11-59)

### **Sec. 38-164. Administration.**

The city commission may adopt such ordinances as are necessary to effectively administer this article.

(Code 1988, § 11-60; Ord. No. 05-36, § 11, 7-14-05)

Cross reference—Administration, ch. 2.

### **Sec. 38-165. Variances.**

#### *(a) Administrative variances:*

- (1) The community development director may grant a variance from section 38-155 or 38-156.
- (2) Any person seeking a variance shall submit an application to the community development director for the city containing information which demonstrates that bringing the sound for which the variance is sought into compliance with this article would constitute an unreasonable hardship on the applicant, the community, or on other persons. At a minimum, the applicant shall provide the following information:
  - a. Identification of the applicant;
  - b. The applicant's mailing address;
  - c. A legal description of the property from which the sound will emanate;

- d. A description of the source of the sound;
- e. A description of the sound;
- f. The names and addresses of all property owners within 300 feet of the property for which the variance is requested;
- g. The facts and reasons justifying a variance; and
- h. Any other relevant information necessary to make a determination.

- (3) The applicant for a variance shall pay an application fee of \$75.00.
- (4) The community development director for the city shall schedule a public hearing on the variance application in accordance with the procedures set forth in section 118-133.
- (5) At the hearing, the applicant for a variance, any department of the city and persons objecting to the variance application may submit any relevant evidence or testimony. In deciding whether to grant, grant with conditions, or deny the application, the community development director shall balance the hardship which will result to the applicant, the community, and other persons if the variance is not granted. If the community development director determines that the granting of the variance, with or without conditions, will be in harmony with the general intent, purposes and goals of chapter 118 and that the variance will not be unduly injurious to the area involved or otherwise unduly detrimental to the public, the variance shall be granted. Additionally, if the reasonable use of property is not feasible without the granting of a variance, the minimum variance to make the property reasonably useable shall be granted. The community development director shall grant, deny or grant with conditions the variance application no later than ten days after the date of the hearing. In granting, granting with conditions or denying a variance application, the commu-

nity development director shall state in writing the reasons for the decision. If the decision is to grant or grant with conditions the application, the community development director shall set forth in writing the terms and conditions of the variance, including the effective date of the variance, the period of the variance, the time of day the variance may be used, the location where the sound may be created or caused, and the sound level limits. The reasons for a denial shall be set forth in writing.

- (6) If the community development director grants the variance application, a written variance shall be issued to the applicant and a copy of the variance shall be provided to those persons and entities requiring a copy. However, the variance shall not be issued until the time for filing a notice of appeal pursuant to subsection (a)(9) of this section has expired. If a notice of appeal is filed, the variance shall not be issued unless the city commission approves a variance.
- (7) The variance shall contain all the terms and conditions of the variance. A copy of the variance shall be retained by the community development director. This copy shall be available for inspection upon request by the general public.
- (8) The failure to comply with any term or condition of the variance constitutes a violation of this article and is punishable in the manner provided in sections 38-161 and 38-162 of this article.
- (9) Any variance applicant, abutting property owner, or adversely affected property owner or occupant may appeal a decision of the community development director in the manner proscribed in section 98-31. The city commission shall conduct a de novo review in deciding whether to approve or disapprove the community development director's decision and in granting, denying or granting with conditions a variance.

(b) *Administrative variances for construction activity:*

- (1) Notwithstanding the provisions set forth in section 38-155(b)(2) above, any person may apply to the city on form(s) approved by the city to allow for construction activities to occur outside of the days and times referenced in section 38-155(b)(2) above provided that each of the following conditions have been met:
  - a. Applicant provides city with 72-hour written notice prior to commencement of construction activity;
  - b. City staff is available to inspect and review construction activity on the days and at the times requested for construction; and
  - c. Applicant pays all fees, costs and expenses incurred or to be incurred by city as well as any overtime incurred by city staff for such inspections and review of construction activity.
- (2) If the conditions enumerated under section 38-165(b)(1) have been met, the city may permit the applicant to perform the following construction activities on the specified days and at the specified times:
  - a. Horizontal construction may be permitted to occur no later than 9:00 p.m. horizontal construction includes site work such as clearing, grading, paving, drainage, utilities, sidewalks, curbs, gutters, base work, street lighting, electrical, landscaping and other subdivision and nonresidential site improvements or work.
  - b. Vertical construction may be permitted to occur 24 hours a day any day of the week subject to prohibition by the city, in the city's sole discretion, if any part of the vertical construction causes, or is likely to cause noise. Vertical construction includes footings, forms, steel, electrical, plumbing, roofing, HVAC, concrete,