

WORKSHOP  
APALACHICOLA CITY COMMISSION  
TUESDAY, MAY 31, 2022 – 4:00PM  
BATTERY PARK COMMUNITY CENTER  
1 BAY AVE., APALACHICOLA, FLORIDA 32320

**Agenda**

You are welcome to comment on any matter under consideration by the Apalachicola City Commission when recognized to do so by the Mayor. Once recognized please rise to the podium, state your name for the record and adhere to the three minute time limit for public comment. Comments may also be sent by email to the City Manager or to Commissioners.

**I. Call to Order**

**II. Public Comment**

**III. Noise Ordinance Discussion**

**IV. Adjournment**

Any person who desires to appeal any decision at this meeting will need a record of the proceeding and for this purpose, may need to ensure that a verbatim record of the proceeding is made which includes testimony and evidence upon which the appeal is based. Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's Office 48 hours in advance of the meeting.

ORDINANCE NO. 2022-\_\_

AN ORDINANCE OF THE CITY OF APALACHICOLA, FLORIDA AMENDING ORDINANCE NO. 2015-01 REGULATING AND PROHIBITING THE EMISSION OF HARMFUL NOISE; DECLARING SAID NOISES TO BE DETRIMENTAL TO THE PUBLIC HEALTH, COMFORT, CONVENIENCE, SAFETY, WELFARE AND PROSPERITY OF THE RESIDENTS OF SAID CITY; ESTABLISHING AND DEFINING CERTAIN TERMS; ESTABLISHING AND PROVIDING FOR CERTAIN EXCEPTIONS; PROHIBITING THE MAKING, CAUSING OR ALLOWING OF SAID NOISES WHICH CAUSE A NOISE DISTURBANCE OR EXCEED CERTAIN SOUND LEVELS; PROVIDING FOR TECHNIQUES TO BE USED IN MEASURING LEVELS OF SAID NOISE AND THE ESTABLISHMENT OF SAID LIMITS; PROVIDING FOR PENALTIES; PROVIDING FOR ADDITIONAL CIVIL REMEDIES AND CITATIONS; PROVIDING FOR THE REPEAL OF ANY ORDINANCE OR PARTS THEREFROM IN CONFLICT HEREWITH; PROVIDING FOR SPECIAL PERMITS; PROVIDING FOR APPEALS OF SPECIAL PERMIT ; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the making and creation of excessive and unusually loud noises within the City of Apalachicola, Florida, is a condition which has existed for some time; and

WHEREAS, the City of Apalachicola recognizes that the current manner in which sound levels are defined and measured must be updated; and

WHEREAS, said noises and the amount, intensity, duration and vibration of said noises are increasing within the area of said City as population, industry and tourism grows; and

WHEREAS, the making and creation of said noises are prolonged, unusual and unnatural in their time, place and use and effect and are a detriment to the public health, comfort, convenience, safety, welfare and prosperity of the residents of said City; and

NOTE: ~~Struck through~~ language is language proposed to be deleted, Underlined language is amended language, and \*\*\* represents sections that have been skipped and that remain unchanged.

**WHEREAS**, as a matter of legislative determination and public policy, the City Commission of the City of Apalachicola finds it in the public interest for the provisions and prohibitions hereinafter contained to be enacted; and

**WHEREAS**, it is further declared that the provisions and prohibitions hereinafter contained and enacted are in the pursuance of and for the purpose of securing and promoting the public health, comfort, safety, welfare and prosperity of the inhabitants of said City of Apalachicola; and

**WHEREAS**, it is the intent of this Ordinance that it shall work harmoniously with existing ordinances and valid state statutes regulating noise emissions and shall be an additional regulation to any such pre-existing ordinances and statutes; and

**WHEREAS**, it is the intent of this ordinance to amend Ordinance No.: 2015-01.

**NOW THEREFORE, BE IT INACTED BY THE PEOPLE OF THE CITY OF APALACHICOLA, FLORIDA:**

#### **ARTICLE I. NOISE**

**Section 1.** **Terminology; Definitions.** All terminology used in this article not defined below shall be defined according to applicable publications of the American National Standards Institute (ANSI) or the American Society for Testing and Materials (ASTM) or their successor bodies.

*A-weighted sound level (dBA):* The sound pressure level in decibels as measured on a sound level meter using the A-weighted network. The level so read is designated "dBA."

*C-weighted sound level (dBC):* The sound pressure in decibels as measured on a level meter using the C-weighted network. The level so read is designated as, "dBC"

*Ambient Noise:* The surrounding or steady background noise in a particular location as distinct from the specific noise being measured.

*Commercial Area:* Land used primarily for the sale of merchandise or goods, or for the performances of a service, or for office or clerical work.

*Construction activity:* Any site preparation, assembly, erection, substantial repair, alteration, or improvement of realty, whether publicly or privately owned, and whether above ground or below ground.

*Decibel (dB):* The practical unit of measurement for sound pressure level; the number of decibels of a measured sound is equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the sound pressure of the measured sound to the sound pressure of a standard sound (twenty (20) micropascals; abbreviated "dB."

*Emergency:* Any occurrence or set of circumstances involving actual or imminent physical trauma to human beings or living creatures or property damage which necessitates immediate action.

*Emergency Work:* Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency, including work necessary to restore property to a safe condition following an emergency.

*Industrial Area:* Land use which is primarily for manufacturing, processing or an airport.

*Multifamily Dwellings:* a building designed or used exclusively for residential occupancy by two (2) or more families.

*Noise:* Any sound which annoys or disturbs humans or causes or tends to cause an adverse psychological effect on humans. "Noise" includes low frequency vibrations, such as caused by amplifications of bass instrumental sounds.

*Noise Disturbance:* Sound which (a) is or may be harmful or injurious to the health or welfare of a person with normal sensitivities, or (b) significantly interferes with the enjoyment or normal conduct of life, property or outdoor recreation, or (c) causes noise pollution.

*Noise Pollution:* shall mean the presence of noise in an excessive or disturbing amount or of such duration, wave frequency or intensity as to be injurious to human or animal life or property.

*Park Land:* Land that is used primarily for public recreational activities.

*Person:* Any individual, natural person, public or private corporation, firm, association, joint venture, partnership, or any other entity whatsoever or any combination of such, jointly and severally.

*Public Right-of-Way:* Any street, avenue, boulevard, highway, sidewalk or alley or similar place normally accessible to the public which is owned or controlled by a governmental entity.

*Public Space:* Any real property or structure thereon normally accessible to the public which is owned or controlled by a governmental entity.

*Pure Tone:* Any sound which can be distinctly heard as 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 tones exceeds arithmetic value the sound pressure levels of the two (2) contiguous one-third octave bands by five (5) dB.

*Real Property Line:*

- (a) The imaginary line including its vertical extension that separates one parcel of real property from another; or
- (b) The vertical and horizontal boundaries of a dwelling unit that is one unit in a multi-dwelling-unit building.

*Receiving Land:* Land area neighboring or in the vicinity of a sound source and on or at which the sound emanating from the sound source is audible to the normal human ear.

*Residential:* Land use that is primarily for living and sleeping or park land or hospitals or schools or nursing homes or the individual plots within a mobile home park assigned by the owner of the park or any land use that is not commercial or industrial.

*Short Durations:* Any sound with a duration of less than one minute.

*Sound:* An oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

*Sound Analyzer:* A device for measuring the octave band level of a sound as a function of frequency.

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

*Sound Level Meter:* An instrument which includes a microphone, amplifier, cellular phone application, RMS detector, integrator or time average, output meter, and weighting networks used to measure sound pressure levels. The output meter reads sound pressure level when properly ~~property~~ calibrated, and the instrument is of type 2 or better, as specified in the American National Standards Institute publication S1.4- 1972 or its successor publication.

*Sound Pressure:* 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 energy.

*Sound Pressure Level:* Twenty (20) times the logarithm to the base ten (10) of the ratio of the RMS sound pressure to the reference pressure of twenty (20) micronewtons per square meter (20 x 10<sup>-6</sup>N/m<sup>2</sup>). The sound pressure level is expressed in decibels.

**Section 2.** **Area of applicability.** This article shall be applicable to and embrace all areas within the City limits of the City of Apalachicola.

**Section 3.** **Exceptions.** The following activities or sources are exempt from the requirements of this article:

- (1) The emission of sound for the purpose of ~~altering~~ alerting persons to the existence of an emergency, or in the performance of emergency work.
- (2) Between the hours of 7:00 a.m. and 11:00 p.m., ceremonial or traditional activities or events, including the sounding of church bells and the normal sounds of organized sporting and cultural events, but specifically not including music or other amplified sounds performed or played at volumes or vibrations that violate standards of this article.
- (3) Operation of equipment or conduct of activities normal to residential or agricultural communities as set forth herein:

	<i>Description</i>	<i>Hours of Operations</i>
(a)	lawn care, soil cultivation, domestic power tools, lawn mowers, maintenance of trees, hedges, gardens, saws and tractors, street sweepers, mosquito fogging, tree trimming and limb chipping and other normal community operations	7:00 a.m. to 10:00 p.m.
(b)	operation of equipment for solid waste and recycling collection in or adjacent to residential uses	6:00 a.m. to 6:00 p.m.
(c)	operation of equipment for solid waste collection in nonresidential locations	4:00 a.m. to 10:00 p.m.

- (4) Operation of manufacturing in areas zoned for such activities and which do not create a noise disturbance on any properties not designated for such activities.
- (5) Usual noises of construction and operation of construction equipment between the hours of 7:00 a.m. to 8:00 p.m.
- (6) Usual engine noises of traffic and motor vehicles on the public right-of-way.
- (7) Single family residential air-conditioning units when in reasonable mechanical condition operating with the standard noise and vibration control systems typically provided by the manufacturer. A unit is presumed to be in reasonable mechanical condition if it meets the noise specifications contained in the Air Conditioning and Refrigeration Institute's ("ARI") Applied Directory of Certified Produce Performance Variable Air Volume terminals.
- ~~(8) Properly licensed and zoned commercial establishments serving food and/or beverages within a building as their main operational business purpose that have entertainment located within the confines of their occupied building walls and ceilings with the doors and windows not left open.~~

**Section 4. Prohibited Acts.** The occurrence of the conditions, acts or omissions as described in subsections (1) or (2) of this section shall constitute a violation of this article. The Requirements in any one of said subsections stand alone. Measurements described in subsection (2) shall constitute *prima facie* evidence of a violation of this article. However, such measurements are not necessary for enforcement of this article, *i.e.* neither sound measurements as provided in subsection (2) nor any other type of sound measurements are necessary to prove a violation of subsection (1) of this section.

(1) *Noise Disturbance.* Notwithstanding any other provision of this article, and in addition thereto, it shall be unlawful for any person to make or continue, or cause to permit to be made or continued, any noise disturbance, as defined in Section 1.

(a) *Standards.* The standards to be considered in determining whether a violation of subsection (1) of this section exists may include but shall not be limited to the following:

1. The volume of noise.
2. The intensity of the noise.
3. Whether the nature of the noise is usual or unusual.
4. The volume and intensity of the ambient noise, if any.
5. The proximity of the noise to residential sleeping facilities.
6. The nature and zoning of the area from which the noise emanates.
7. The nature and zoning of the receiving land.
8. The time of the day or night the noise occurs.
9. The duration of the noise.
10. Whether the noise is produced by a commercial or noncommercial activity.

(b) *Enforcement.* Enforcement does not depend on any minimum number of standards being met.

(c) *Persons Affected.* Persons affected may include residents, passersby, law enforcement, property owners or code enforcement officials.

(2) *Maximum Permissible Sound Levels.*

(a) *Sound and Measurement Location.* No person shall operate or cause to be operated, from any source, sound which, when measured from the location indicated below at the property line of the property where the sound is being generated, exceeds:

**Residential – No Heavy Rhythmic Bass**

	<u>At Source Property Line</u>	<u>At Receiver</u>
<u>Property Line</u>		
<u>7 a.m. – 10 p.m.</u>	<u>75 dBA</u>	<u>65</u>
<u>dB</u>		
<u>10 p.m. – 7 a.m.</u>	<u>70 dBA</u>	<u>60</u>
<u>dB</u>		

**Residential – WITH Heavy Rhythmic Bass Sounds Evident**

	At Source Property Line	At Receiver
<u>Property Line</u>		
7 a.m. – 10 p.m.	85 dBC	75
<u>dBC</u>		
10 p.m. – 7 a.m.	80 dBC	70
<u>dBC</u>		

**Commercial – all measurements made across street from sound source**

	No Heavy Rhythmic Bass	WITH Heavy Rhythmic Bass Evident
7 a.m. – 10 p.m.	70 dBA	80
<u>dBA</u>		
10 p.m. – 7 a.m.	65 dBA	75
<u>dBC</u>		

**Industrial Receiving Property: 75 dBA or 85 dBC, measured at the property line of the receiving property.**

1. ~~Sixty (60) dBA during the hours between 7:00 a.m. and 10:00 p.m. at the property line of the noise source.~~
2. ~~Fifty five (5) dBA during the hours between 10:00 p.m. and 7:00 a.m. at the property line of the noise source.~~
3. ~~Sixty five (65) dBA if the receiving land is a commercial area.~~
4. ~~Eighty (80) dBC dBA if the receiving land is industrial.~~

(b) *Correction for Character of Sound.* For any source of sound which emits a pure tone, the maximum sound level limits set forth in subsection (2)(a) shall be reduced by five (5) dBC ~~dBA~~. For any source of sound which is of short duration and is non-repetitive, the maximum sound level limits set forth in subsection (2)(a) shall be increased by ten (10) dBC ~~dBA~~ from 7:00 a.m. to 10:00 p.m.

(c) *Correction for Ambient Noise.* Corrections for ambient noise should be made in

accordance with applicable ASTM standards.

(d) *Methods of Measurements.*

1. The measurement of sound shall be made with a decibel or a sound level meter operating on the C or A weighted scale, as applicable of any standard design and quality meeting the standards prescribed by the American National Standards Association. The instruments shall be maintained in calibration and good working order. Measurements recorded shall be taken so as to provide a proper representation of the sound source. The microphone used during measurement shall be positioned so as to not to create any unnatural enhancement or diminution of the measured sound. A wind- screen for the microphone shall be used when required. Traffic, aircraft, and other background ambient sounds shall not be considered in taking measurements except where such ambient sound interferes with the primary noise being measured.

- ~~2. The measurement shall be made at or beyond the real property line of the property on which such sound is generated or on the receiving land, as appropriate, approximately five (5) feet above ground.~~

**Section 5.** **Enforcement and Penalties.** Any person or entity violating any of the provisions of this article shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations shall be prosecuted in the name of the State of Florida in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and, upon conviction for the first offense shall be punished by a fine not to exceed Two Hundred and fifty dollars (\$250.00) (\$50.00); and up to Five Hundred dollars (\$500.00) for any repeat offense. ~~for the second offense, shall be punished by a fine not to exceed one hundred fifty dollars (\$150.00); and for the third offense and thereafter, shall be punished by a fine not to exceed two hundred fifty dollars (\$250.00) or by imprisonment in the county jail not to exceed sixty (60) days or by both such fine and imprisonment. Each incident or separate occurrence of an act that violates this article shall be deemed a separate offense.~~

**Section 6.** **Civil Remedies and Citations.** In addition to the criminal penalties provided in

Section 5 above, the City Commission of the City of Apalachicola is authorized to institute any appropriate action or proceeding, including suit for injunctive relief, as may be necessary, in order to prevent or abate violations of this article. Citations may also be issued to enforce this article as provided by other Ordinances authorized by the City of Apalachicola.

**Section 7.** **Special Permits.** Special permits for prospective activities that will exceed the maximum permissible noise levels permitted by this section may be obtained by completed application to the City Administrator or her/his designee. Such special permit shall not be unreasonably withheld so long as the prospective activity will not adversely affect the health, safety and welfare of nearby residents. The administrative determination shall be made within ten (10) business days of application, or the subject activity shall be deemed permitted.

**Section 8.** **Appeals.** Any person denied a Special Permit may file an administrative appeal to the City Commission.

**Section 9.** **Severability.** If any section, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

**Section 10.** **Effective Date.** This Ordinance shall take effect immediately upon adoption by the City of Apalachicola, Florida.

First Reading on :  
Second Reading and Adoption on :

ATTEST: City Commission of the  
City of Apalachicola, Florida

By: \_\_\_\_\_  
Deborah Guillotte, City Clerk

By: \_\_\_\_\_  
Brenda Ash, Mayor

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Daniel W. Hartman, City Attorney