



LES W. BURKE °
 ROB BLUE, JR.
 EDWARD A. HUTCHISON, JR.
 DOUGLAS L. SMITH +
 NEVIN J. ZIMMERMAN
 MICHAEL S. BURKE
 JOY MARLER MASTERS ++
 GRAHAM CLARKE °*+++ ♦
 CLARK T. ROGERS
 NATALIE A. MCSWANE
 WILLIAM C. HENRY °**
 SANDRA A. WILSON °
 GREGORY J. PHILO
 JESSICA L. STEWART
 KELLIANNE C. BARKLEY ***
 JON GRONBECK
 CAROLINE LACOUR SMITH °

September 7, 2022

Mayor and City Commissioners
 501 Harrison Ave.
 Panama City, FL 32401

° OF COUNSEL
 * ALSO ADMITTED IN GEORGIA
 ** ALSO ADMITTED IN NEW YORK
 *** ALSO ADMITTED IN ALABAMA
 + CERTIFIED CIRCUIT COURT MEDIATOR
 ++ L.L.M. IN TAXATION
 +++ CERTIFIED FAMILY MEDIATOR
 ♦ BOARD CERTIFIED MARITAL &
 FAMILY LAW ATTORNEY

RE: Ordinance 3108 Amending Chapter 12 of the Municipal Code – Noise Control

Dear Mayor and Commissioners:

Attached for your consideration is Ordinance 3108 Amending Chapter 12 of the Municipal Code related to Noise Control. The amendment provides for updated definitions, such as continuous airborne sound, adopts a standard for sound level meters, and provides that a written report shall be made to document warnings.

Noise violations are presented to the Code Enforcement Special Magistrate and the City Attorney’s office received a request from the Special Magistrate to update the code. The request was to provide a definition for continuous airborne sound and provide a standard of certification for the sound level meters. Staff then reviewed the entire Noise Control code and made further updates. The additional updates include providing a definition of an affected person, a definition of extraneous sound and providing that Officers make a written report when providing a warning to a Respondent of a noise violation so that there is a record of that warning.

Staff recommends that the Commission have the first reading.

Sincerely,

Nevin J. Zimmerman, City Attorney

cc: Mark McQueen, City Manager
 Jan Smith, City Clerk-Treasurer
 Mark Smith, Chief of Police
 Michael Fuller, Director of Environmental Services

ORDINANCE NO. 3108

AN ORDINANCE AMENDING CHAPTER 12 – ENVIRONMENT, ARTICLE VI. NOISE CONTROL, OF THE GENERAL ORDINANCES; ADDING VARIOUS DEFINITIONS FOR CLARIFICATION; ADOPTING NATIONAL STANDARD CERTIFICATIONS FOR SOUND LEVEL METERS; PROVIDING THAT WRITTEN REPORTS ARE MADE FOR WARNINGS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING FOR REPEALER; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF PANAMA CITY, FLORIDA:

WHEREAS, the City of Panama City Commission has determined that there is a need to include a additional definitions to help determine when there is a noise violation;

WHEREAS, the City of Panama City Commission finds that it is necessary to have a certification standard for the use of sound level meters;

WHEREAS, the City of Panama City Commission wishes to protect its citizens from noise disturbances.

NOW THEREFORE, IT IS ORDAINED by the City Commission of Panama City, Florida, amends the Noise Control chapter as follows:

SECTION 1. From and after the effective date of this Ordinance, Chapter 12 of the City’s Code of Ordinances is amended to read as follows. Sections not referenced have not been amended:

(~~Strikethrough~~ text is being deleted; Underlined text is being added)

ARTICLE VI. - NOISE CONTROL

Sec. 12-164. - Definitions.

For the purpose of this section, the following words and phrases are defined as follows:

“A” weighted sound pressure level. The sound pressure level as measured with a sound level meter using the A-weighting network. The standard notation in dB(A) or dBA.

Affected Person. Any person who has made a Noise complaint with an authorized enforcement agency that he or she is the receptor of Noise on any nearby property and that he or she has an interest in the property as an owner, tenant, guest or employee where they are making the complaint from. A Police Officer or a Code Enforcement Officer can be considered an Affected Person for the purposes of enforcing this Article.

Alarm. Any fire, burglary, motor vehicle or civil defense alarm, whistle or similar stationary emergency signaling device.

Chronic public nuisance. The creating or permitting the existence of any illegal activities on properties that are prohibited by the laws of the State of Florida or the ordinances of the city requiring the presence of the city law enforcement officers on their premises on five or more occasions within a 30-day period.

Construction. Any site preparation, assembly, erection, substantial repair, alteration, demolition or similar action, for or of public or private rights-of-way, structures, vacant lots, utilities or similar property.

Continuous airborne sound. Any sound with a duration of more than one second.

Daytime. 7:00 a.m. to 10:00 p.m. the same day.

Emergency. Any occurrence or set of circumstances involving actual or imminent physical or psychological trauma or property damage demanding immediate attention. It shall be the burden of an alleged violator to prove an "emergency."

Emergency vehicle. A motor vehicle belonging to a fire department or certified vehicle belonging to a volunteer fireman or firefighting association, partnership, or corporation, an ambulance, a motor vehicle belonging to a private security agency or a motor vehicle belonging to a federal, state, county or municipal agency; provided such vehicles are in use as an emergency vehicle by one authorized to use such vehicle for that purpose.

Emergency work. Any work made necessary to restore property to a safe condition following an emergency, or for the purpose of protecting property and preventing damage threatened by an imminent emergency, to the extent such work is necessary to protect persons or property from exposure to imminent danger or damage.

Extraneous Sound. A sound of high intensity and relatively short duration which does not come from the sound source under investigation. Examples of Extraneous Sounds include: an unmuffled vehicle passing the measurement location; an aircraft overflight; a pedestrian talking loudly; a quick wind gust rustling leaves. Extraneous Sounds shall be excluded from sound level measurements when taken.

Impulsive sound. Sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions and drop forge impacts.

Motor vehicle. Motor vehicle means a vehicle with two or more wheels or a machine propelled or drawn by mechanical power and used on the public roads and highways in the transportation of passengers or property, or any combination thereof, which is required to be licensed, but does not include any vehicle, locomotive or car operated exclusively on rail or rails.

Multi-dwelling unit building means any building comprising two or more dwelling units, including, but not limited to, apartments, condominiums, co-ops, multiple family houses, townhouses, and attached residences.

Multi-use Property means any single and distinct parcel of land that maintains two or more major uses. Examples include, but are not limited to:

1. A property which contains a commercial, residential or industrial use or Public Service Facility having boilers, incinerators, elevators, automatic garage doors, air

conditioners, laundry rooms, utility provisions, or health and recreational facilities, or other similar devices or areas, either in the interior or on the exterior of the building, which may be a source of elevated sound levels for another use on the same distinct parcel of land; or

2. A building which maintains both commercial (usually on the ground floor) and residential uses.

Nighttime. 10:00 p.m. to 7:00 a.m. the following day.

Noise. Any sound which disturbs humans or other animals, or which causes or tends to cause an adverse psychological or physiological effect on humans or other animals.

Noise disturbance. Any sound which:

- (1) Disturbs a reasonable person of normal sensitivities; and
- (2) Exceeds the sound level limits set forth in this chapter.

Noise sensitive area. An area where a school, hospital, nursing home, church, court, or public library is located.

Person. Any individual, association, partnership or corporation, including any officer, employee, department, agency or instrumentality of the United States.

Powered model vehicle. Any self-propelled airborne, waterborne, or land borne plane, vessel or vehicle which is not designed to carry persons, including but not limited to any model airplane, boat, car or rocket.

Property. Any parcel of real property, unimproved or improved, and includes any such property used for providing goods or services to third persons by a for profit or not for profit owner, operator, user or occupant of the property.

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

Public space. Any real property or structures thereon owned by a governmental entity and normally accessible to the public, including but not limited to parks and other public recreational areas, roadways, and easements.

Real property line. Either (a) the imaginary line including its vertical extension that separates one parcel of real property from another; (b) the vertical and horizontal boundaries of a dwelling unit that is part of a multi-dwelling unit building; or (c) on a multi-use property, the interface between the two portions of the property on which different categories of activity are being performed (e.g., if the multi-use property is a building which is residential upstairs and commercial downstairs, then the real property line would be the interface between the residential area and the commercial area).

Recreational vehicles. Any scooter, golf cart, or recreational vehicle whether or not such requires a license for the operation thereof.

Sound level. The weighted sound pressure level obtained by use of a sound level meter as specified in the American National Standards Institute specifications for sound level meters or other recognized acceptable national standards.

Sound level meter. An instrument that measures sound and that is certified by The National Institute of Standards Technology (NIST) or certified by other recognized acceptable national standards.

Sec. 12-165. - Prohibited acts.

- (a) *Generally.* No person, firm, partnership, corporation, or other business entity shall make, continue or cause to be made or continue any loud, raucous, jarring, disturbing or excessive sound which unreasonably interferes with the comfort and repose of others within the jurisdiction of the city.
- (b) *Unlawful to cause noise disturbances.* It shall be unlawful, except as expressly permitted herein, to make, cause or allow the making of any noise or sound which causes a noise disturbance as defined herein.
- (c) *Sound causing permanent hearing loss.*
 - (1) *Sound level limits.* Table I specifies sound level limits which, if exceeded, will have a high probability of ~~producing permanent hearing loss in~~ causing a nuisance for anyone in the area where the sound levels are being exceeded. No sound shall be permitted within the city, which exceeds the parameters set forth in Table I, unless otherwise provided for in this chapter.
 - (2) *Exemptions.* No violation shall exist if the only persons exposed to sound levels in excess of those listed in Table I are exposed as a result of trespass, invitation upon private property by the person causing or permitting the sound or employment by the person or a contractor of the person causing or permitting the sound.

TABLE I. MAXIMUM SOUND LEVELS (IN dB(A)) FOR SOURCE LAND USES		
MAXIMUM PERMISSIBLE SOUND LEVELS		
Land Use Category	Time	Sound Level Limit (dB(A))
Residential, public space or institutional	7:00 a.m.—10:00 p.m.	70
	10:00 p.m.—7:00 a.m.	65
Commercial or business	7:00 a.m.—10:00 p.m.	75
	10:00 p.m.—7:00 a.m.	70
Industrial, manufacturing or agricultural	At all times	75

** Where the property boundaries of two conflicting zones meet, the permissible decibel reading at that point/location shall be controlled by the higher of the two allowable sound levels. For example, where the property line of a residential zone meets the property line

of a commercial zone, the permissible sound level limit will be 75 between the hours of 7:00 a.m. and 10:00 p.m. and 70 between the hours of 10:00 p.m. and 7:00 a.m.**

** Multi-Dwelling property measurements for decibel limits will be taken in the complainant's dwelling.

- (d) *Continuous airborne sound decibel limits.* No person shall create, operate or cause to be operated on private property any source of sound in such a manner as to create a continuous airborne sound which exceeds the limits set forth in Table I for the source land use category when measured at a distance of 20 feet or more from the real property line of the source of the sound. Any source of sound in violation of this subsection shall be deemed prima facie to be a noise disturbance. Any Extraneous Sounds shall be excluded from sound level measurements.
- (e) *Specific prohibitions.* In addition to the general prohibitions set out in subsection (a) and unless otherwise exempted by this chapter, the following specific acts, or the causing or permitting thereof, are hereby regulated as follows:
- (1) *Motor vehicles.* No person shall operate or cause to be operated a public or private motor vehicle, or combination of vehicles towed by a motor vehicle, at any time, that creates a sound exceeding the sound level limits in Table II. The sound level shall be measured at a distance of at least seven and five-tenths meters (25 feet) from the near side of the nearest lane(s) being monitored and at a height above the immediately surrounding surface as recommended by the manufacturer's guidelines. This section shall apply to the total noise from a vehicle.

TABLE II. MAXIMUM PERMISSIBLE SOUND LEVELS FOR MOTOR VEHICLES		
	Sound Level Speed Limit 35 mph or Less	Sound Level Speed Limit 35 mph or Higher
Daytime	91	95
Nighttime	78	78

- (2) *Radios, televisions, electronic audio equipment, musical instruments or similar devices.* No person shall operate, play or permit the operation or playing of any radio, tape player, television, electronic audio equipment, musical instrument, sound amplifier, or other mechanical or electronic sound making/emitting device that produces, reproduces or amplifies sound in such a manner as to create a noise disturbance across a real property boundary, unless such activity is specifically exempted elsewhere in this chapter.
- (3) *Loudspeakers and public address systems.* No person shall operate, or permit the operation of, any loudspeaker, public address system or similar device, for any commercial purpose which produces, reproduces or amplifies sound in such a manner as to create a noise disturbance; or during nighttime hours on a public right-of-way or public space. No person shall operate, or permit the operation of, any loudspeaker, public

address system or similar device, for any noncommercial purpose, during nighttime hours in such a manner as to create a noise disturbance.

- (4) *Animals.* No person shall own, possess or harbor an animal or bird that howls, barks, meows, squawks or makes other sounds that: (a) create a noise disturbance across a residential real property boundary; (b) are of frequent or continued duration for ten or more consecutive minutes; or (c) are intermittent for a period of 30 or more minutes; providing however, that an animal shall not be deemed to be acting in violation of this section if, at the time of the making of any noise a person is trespassing or threatening to trespass upon the property in or upon which the animal is situated.
- (5) *Construction and demolition.* No person shall operate or cause the operation of any tools or equipment used in construction, drilling, repair, alteration or demolition work between the hours of 9:00 p.m. and 6:00 a.m. the following day on weekdays and 9:00 p.m. and 7:00 a.m. on weekends and holidays such that the sound there from creates a noise disturbance across a real property boundary, except for emergency work by public service utilities or for other work approved by the city manager or designee. This section shall not apply to the use of domestic power tools as provided below.
- (6) *Emergency signaling devices.* No person shall intentionally sound or permit the sounding outdoors of any fire, burglar or civil defense alarm, siren or whistle, or similar stationary emergency signaling device, except for emergency purposes or for testing as follows: (a) testing of stationary emergency signaling devices shall not occur between 7:00 p.m. and 7:00 a.m. the following day; (b) testing of stationary emergency signaling devices shall use only the minimum cycle test time, in no case to exceed 60 seconds; and (c) testing of a complete emergency signaling system, including the functioning of the signaling device and the personnel response to the signaling device, shall not occur more than once in each calendar month. Such testing shall only occur on weekdays and not during nighttime hours, and shall be exempt from the time limit specified in subsection (b) above. No person shall permit the sounding of any exterior burglar or fire alarm unless such alarm is automatically terminated within 15 minutes of activation.
- (7) *Domestic power tools.* No person shall operate or permit the operation of any mechanically, electrically or gasoline motor driven tool during nighttime hours so as to cause a noise disturbance.
- (8) *Street sales.* The offering for sale by shouting or outcry within any residential, commercial or noise-sensitive area, except by permit issued by the city is prohibited.
- (9) *Powered model vehicles.* The operating of or permitting the operation of powered model vehicles between the hours of 10:00 p.m. and 7:00 a.m. on weekdays, and 10:00 p.m. and 10:00 a.m. on weekends or holidays is prohibited. Operating such in a manner as to exceed the levels set for public space land use, measured at a distance of not closer than 30 meters (100 feet) from the operator is prohibited.
- (10) *Pumps, air conditioners, air-handling equipment and other continuously operating equipment.* No person shall operate or permit the operation of any pump, air conditioning, air handling or other continuously operating motorized equipment in such a manner so as to cause a noise disturbance which exceeds the limitations set forth in Table I above. Exception may be made if the noise disturbance exceeding the prescribed limitations does not exceed ten minutes in duration and such disturbance does not occur more frequently

than once per hour. The burden of proving compliance with the stated guidelines will be born by the respondent.

- (f) *Exemptions.* The following uses and activities shall be exempt from the sound level regulations:
- (1) Domestic power tools, lawn mowers and agricultural equipment, when operated with a muffler, between the hours of 7:00 a.m. and 10:00 p.m. on weekdays and 8:00 a.m. and 10:00 p.m. on weekends and holidays.
 - (2) Noises resulting from any authorized emergency vehicles when responding to an emergency call or acting in time of emergency.
 - (3) ~~Noises resulting from the operation of the Panama City—Bay County Airport.~~
 - (4) Noises resulting from the necessary and required operations of governmental military facilities/bases.
 - (5) Noises made from persons having obtained a parade, park usage, festival or similar permit from the city and operating within the confines of such.
 - (6) Any noise resulting from activities of a temporary duration, for which a special permit has been granted pursuant to this article, and which conforms to the conditions and limits stated thereon.
 - (7) Noises from church bells and chimes.
 - (8) Noises produced by zoo animals.
 - (9) Noises resulting from emergency work as defined in this chapter.
 - (10) Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations and air traffic control instruction used pursuant to and within the duly adopted federal air regulations; and any aircraft operating under technical difficulties in any kind of distress, under emergency orders of air traffic control, or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations.
 - (11) All sounds coming from the normal operations of interstate motor and rail carriers, to the extent that local regulation of sound level(s) of such vehicles has been preempted by the Noise Control Act of 1972 or other applicable federal laws or regulations.
 - (12) Any nonamplified noise generated by noncommercial public speaking activities conducted on any public property or public right-of-way pursuant to legal authority.
 - (13) Sounds produced at organized sporting events, by fireworks and by permitted parades on public property or public right-of-way.
 - (14) Outdoor school and playground activities when reasonably conducted on public playgrounds and public or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including but not limited to, school athletic and school entertainment events.

Sec. 12-167. - Violations and penalties.

(a) *Enforcement.* Either a police officer or a code enforcement officer may issue a citation to an offender under this article. The police department, or code enforcement officers, shall be responsible for the enforcement of the provision of this article; provided, however, that the police

department shall be responsible for the issuing of special permits and the enforcement of conditions stated thereon.

(b) *Penalties.*

(1) *Warnings.*

a. When a police officer or code enforcement officer determines noncompliance with this Code, that there is a violation of the noise level limits contained herein, he/she shall issue a warning to the person or persons responsible for the noise and document with a written report. The warning shall be to advise the person of the violation, of the allowable noise limits, and of the possible penalty if he/she fails to reduce or eliminate the noise to such allowable limits.

b. After the person or persons responsible for the noise are given such warning, a reasonable time to comply with the same shall be given. If the limits of Table I in section 12-165 are exceeded, a "reasonable time" is instant. Absent special circumstances, "reasonable time" (where Table I limits are not exceeded) as used in this section is considered 15 minutes in the case of nonvehicular noise emitters.

~~c. For the purposes of this section, it is sufficient warning for all prohibited noises if the person or persons responsible for any succeeding noises are warned of one offending noise of the same type per 24 hour period.~~

d. If a person or persons have been issued one written warning, no other warning shall be necessary within that 60-day period following the warning for enforcement of the provisions of this chapter for any additional violations occurring within the same 60-day period.

(2) *Code Enforcement.*

A Code Enforcement Officer or Police Officer may initiate enforcement as provisioned for in Ordinance 2324 as it may be revised periodically and in accordance with 162.06, Florida Statutes (2020), as it may be amended from time to time.

(3) *Citation/Summons;*

a. If the noise level is not reduced or eliminated to allowable limits within a reasonable time after the warning as prescribed herein, the person so warned and not complying shall be cited for a violation of this chapter and upon conviction shall be subject to the penalties designated in section 1-8 chapter 162, Florida Statutes (2020) as they may be amended from time to time, and the provisions of this section. Each day the violation continues shall be considered as a separate offense.

b. A Code Enforcement Officer or Police Officer, shall notify the operator of any device which produces noise in excess of the limits set by Table I that has been determined to be a health hazard. A police officer or code enforcement officer, shall have the power and authority to have the device removed or toned down instant until such time as it can be otherwise operated in compliance with this chapter. In the case of a violation involving a motor vehicle, the person charged may be granted a period of 15 days in which to correct the source of the sound on a first violation.

(4) *Responsibility of owner of property.* The owner, tenant or leasee of property, or a manager, overseer or agent, or any person lawfully entitled to possess the property from which the offending noise is emitted and at which time the offending noise is emitted shall be responsible for compliance with this chapter, and each may be punished for violations of this chapter. It shall not be a lawful defense to assert that some other person caused the noise, but the lawful possessor of the premises shall be responsible for operating or maintaining the premises in compliance with this chapter and shall be punished whether or not the person causing the noise is also punished.

(5) *Violation may be declared public nuisance.* The operation or maintenance of any device, instrument, vehicle or machinery in violation of any provisions of this chapter that endangers the

comfort, repose, health and peace of residents in the area is declared to be a public nuisance and may be subject to abatement by a restraining order or injunction issued by a court of competent jurisdiction.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.

SECTION 3. CODIFICATION. The appropriate officers and agents of the City are authorized and directed to codify, include and publish in electronic format the provisions of this Ordinance within the Panama City Code, and unless a contrary ordinance is adopted within ninety (90) days following such publication, the codification of this Ordinance shall become the final and official record of the matters herein ordained. Section numbers may be assigned and changed whenever necessary or convenient.

SECTION 4. SEVERABILITY. If any clause or portion of this ordinance is held invalid or unenforceable, the remainder of this ordinance shall continue in full force and effect.

SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage.

PASSED, APPROVED, AND ADOPTED at the regular meeting of the Commission of the City of Panama City, Florida on the ____ day of September, 2022.

CITY OF PANAMA CITY, FLORIDA

By: _____
Greg Brudnicki, Mayor

ATTEST:

Jan Smith, City Clerk-Treasurer