

**Ordinance 12-33**

**AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING ARTICLE IV OF CHAPTER 38 OF THE WINTER GARDEN CITY CODE; PROVIDING FOR EXTENDED HOURS FOR CONSTRUCTION OPERATIONS; PROVIDING FOR ADDITIONAL ABATEMENT OF NOISE IN RESIDENTIAL AND OTHER AREAS; PROVIDING FOR ENFORCEMENT OF NOISE ORDINANCE VIA AN ALTERNATIVE OBJECTIVE STANDARD OF REASONABLENESS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Winter Garden (“City”) desires to amend Article IV of Chapter 38 of its Code of Ordinances relating to the abatement of noise levels within the City to add restrictions on noise affecting residential and other areas and an alternative enforcement mechanism whereby noise may be evaluated by a standard of objective reasonableness; and

**WHEREAS**, the City recognizes recent increases in complaints within residential areas of loud, raucous, or otherwise unduly jarring noise occurring at night during customary periods of slumber and of other times, and the City also recognizes recent increases in disturbances relating to noise in other parts of the City; and

**WHEREAS**, the City acknowledges that modern methods of measuring and evaluating sound levels for the purpose of enforcing its noise ordinance require the use of expensive and delicate equipment, inefficient sharing of measurement devices with other jurisdictions, dependency on the availability of such measurement devices, and required calibration procedures; and

**WHEREAS**, the City has determined that objectively unreasonable, harmful, or environmentally damaging noise often occurs intermittently and at such times that make it impractical to implement or conduct technical measurement or monitoring of such noise; and

**WHEREAS**, it has been held by courts within this state that both the U.S. and Florida Constitutions permit the enforcement of noise ordinances by and through the evaluation of noise in light of an objectively determined reasonable person standard,

**BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:**

**SECTION I:** SECTION 38-153(b). DEFINITIONS, Section 38-153(b) is hereby amended to reflect the following changes (~~struckout text~~ indicates deletions while underlined text indicates additions):

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.

Noise means any sound produced in such quantity and for such duration that it annoys, disturbs, endangers or may injures the comfort, repose, health, peace, or safety of a reasonable prudent man or woman ~~person of normal ordinary sensitivities~~ sensibilities, including any and also includes sounds or sound at or above decibel levels as specifically prohibited by this article.

All other definitions remain the same.

**SECTION II: SECTION 38-155. PROHIBITED ACTS**, Section 38-155 is hereby amended to reflect the following changes (~~struckout text~~ indicates deletions while underlined text indicates additions):

(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 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) ~~In addition to any sound or noise prohibited pursuant to~~ Notwithstanding any violation of subsection (a) above, the following specific uses, and activities and circumstances within the city are declared to be loud, disturbing and excessive noise 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 ~~between the hours of 9:00 p.m. and 7:00 a.m.~~ in such a manner as to create a noise across at the boundary of the property, line including, without limitation, public and private rights of way from which the noise originates. In addition to the preceding, ~~R~~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 heard at ~~50~~ 25 feet or more from such device, when operated or parked on a public or private right-of-way or public or private

space. 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 ~~7~~9:00 p.m. on Saturday ~~and Sunday, 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.* ~~Operating~~Operation of any internal combustion engine, including ~~but not limited to such 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, at least as effective as that installed as original equipment by the manufacturer, which will effectively prevents~~ loud or explosive noises 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 ~~a property line~~ 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.
- (5) *Activities in the vicinity of schools, courts, churches, and hospitals.* ~~Creating any excessive noises~~sound on any street adjacent to any school, court, church, or hospital which ~~unreasonably interferes with the workings of such institutions~~sound constitutes a noise as perceived from the interior of such institution, ~~or which disturbs or unduly annoys patients in hospital.~~
- (6) *Peddlers, hawkers, or vendors.* It shall be unlawful for peddlers, hawkers, or vendors to shout or cry along or on a roadway ~~to the disturbance of the peace or quiet of a neighborhood~~ in such a manner as to create noise on property outside the right of way.
- (7) *Drums, cymbals, and amplified sound equipment*~~loudspeakers.~~ Creating, making, or maintaining any ~~noises~~sound by the use of any drum, cymbals, amplified sound equipment~~loudspeaker,~~ 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. ~~This provision shall not apply to ice cream trucks or approved public events.~~

- (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 ~~such a manner that would results~~ in noise across the boundary of the property from which the noise originates a property line.
- (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 ~~would results~~ in noise across the boundary of the property from which the noise originates a property line.
- (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 ~~4~~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 a property line.
- (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 a property line ~~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 a property line 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 ~~is objectionable~~ constitutes a noise experienced across the boundary of the property from which the noise originates ~~due to pitch, frequency, timing, or any combination thereof.~~

- (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 ~~10~~9:00 p.m. and 7:00 a.m. ~~which~~ where such activity results in any sound or a noise being generated across a residential the boundary of the property from which the noise originates onto property occupied for residential purposes property line.
- (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.

**SECTION III: MAXIMUM PERMISSIBLE SOUND LEVEL LIMITS,** Section 38-156 is hereby amended to reflect the following changes (~~struckout text~~ indicates deletions while underlined text indicates additions):

- (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:

Receiving Land Use Designation	Time	Sound Level Limit (dBA)
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. – <del>10</del> <u>9</u> :00 p.m.	60
	<del>10</del> <u>9</u> :00 p.m. – 7:00 a.m.	55
Multifamily residential dwelling unit	7:00 a.m. – <del>10</del> <u>9</u> :00 p.m.	55
	<del>10</del> <u>9</u> :00 p.m. – 7:00 a.m.	45
Lot, parcel or area zoned for office use	<del>9</del> <u>7</u> :00 a.m. – <del>6</del> <u>9</u> :00 p.m.	75
	<del>6</del> <u>9</u> :00 p.m. – <del>9</del> <u>7</u> :00 a.m.	70
Commercial other than office use	7:00 a.m. – <del>10</del> <u>9</u> :00 p.m.	75
	<del>10</del> <u>9</u> :00 p.m. – 7:00 a.m.	70
Industrial,	7:00 a.m. – <del>10</del> <u>9</u> :00 p.m.	75
	<del>10</del> <u>9</u> :00 p.m. – 7:00 a.m.	70
Agricultural	7:00 a.m. – <del>10</del> <u>9</u> :00 p.m.	75
	<del>10</del> <u>9</u> :00 p.m. – 7:00 a.m.	70

- (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.

**SECTION IV: ENFORCEMENT,** Section 38-160 is hereby amended to reflect the following changes (~~struckout text~~ indicates deletions while underlined text indicates additions):

(a) *Determination of Violations.* ~~The police department~~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. ~~Code enforcement officers are hereby expressly designated as agents of the city manager for purposes of investigating alleged violations and issuing warning notices and~~These individuals shall have authority to issue citations for all violations of this article. If the police department, city manager or any of their authorized agents~~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 § 38-155(a) is alleged, which requires a sound level pressure test ~~may be utilized to establish the violation.~~ , a sound level pressure test with a sound level meter may be performed. If the results of the test indicate that a violation of section 38-155 or 38-156 is occurring or has occurred in the presence of the police department, the city manager or their designated agents, the officer present may issue a citation. Additionally, the police department is thereupon authorized to issue a notice to appear or to arrest the person producing the sound, causing the sound to be produced, or allowing the sound to be produced. 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.

**SECTION V:** Sec. 38-161. Penalty. Section 38-161 is hereby amended to reflect the following changes (~~struckout text~~ indicates deletions while underlined text indicates additions):

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 III, 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. ~~and shall be subject to the enforcement procedures provided set forth in chapter 2 of the Winter Garden Code of Ordinances dealing with code violations, including by use of the city's code enforcement citation program or code enforcement board.~~

**SECTION VI:** Sec. 38-165. Variances. Section 38-165 is hereby amended to reflect the following changes (~~struckout text~~ indicates deletions while underlined text indicates additions):

**A. Administrative Variances:**

- (a) The ~~planning and zoning board~~Community Development Director may grant a variance from section 38-155 or 38-156.
- (b) Any person seeking a variance shall submit an application to the Community Development Director ~~director of planning and zoning~~ 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:
  - (1) Identification of the applicant;
  - (2) The applicant's mailing address;
  - (3) A legal description of the property from which the sound will emanate;
  - (4) A description of the source of the sound;
  - (5) A description of the sound;



- (6) The names and addresses of all property owners within 300 feet of the property for which the variance is requested;
  - (7) The facts and reasons justifying a variance; and
  - (8) Any other relevant information necessary to make a determination.
- (c) The applicant for a variance shall pay an application fee of \$75.00.
- (d) The Community Development Director ~~director of planning and zoning~~ for the city shall schedule a public hearing on the variance application ~~with the planning and zoning board~~ in accordance with the procedures set forth in section 118-133.
- (e) At the hearing, the applicant for a variance, ~~the director of planning and zoning~~ any department of ~~for~~ 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 ~~planning and zoning board~~ 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 ~~planning and zoning board~~ 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 ~~planning and zoning board~~ 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 Community Development Director ~~planning and zoning board~~ 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 ~~planning and zoning board~~ 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.
- (f) If the Community Development Director ~~planning and zoning board~~ grants the variance application, a written variance shall be issued to the applicant and a copy of the variance shall be provided to ~~the those persons and entities requiring a copy~~ director of planning and zoning. However, the variance shall not be issued until the time for filing a notice

of appeal pursuant to subsection (i) 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.

- (g) 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 ~~director of planning and zoning~~. This copy shall be available for inspection upon request by the general public.
- (h) 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.
- (i) Any variance applicant, abutting property owner, or adversely affected property owner or occupant may appeal a decision of the Community Development Director ~~planning and zoning board~~ 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 ~~planning and zoning board's~~ decision and in granting, denying or granting with conditions a variance.

B. Administrative Variances for Construction Activity:

- (a) 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:
  - (1) Applicant provides City with 72-hour written notice prior to commencement of construction activity;
  - (2) City staff is available to inspect and review construction activity on the days and at the times requested for construction; and
  - (3) 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.
- (b) If the conditions enumerated under Section 38-165(B)(a) have been met, the City may permit the applicant to perform the following construction activities on the specified days and at the specified times:
  - (1) 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 non-residential site improvements or work.

- (2) 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, painting, sheetrock, and other activities that are not Horizontal Construction.

C. Exemptions for Pre-approved City Events or Activities:

- (a) It shall not be a violation of section 38-155(a) or section 38-155(b) if the noise at issue relates to or is produced as a result of pre-approved City events or activities. Such exemptions include, but are not limited to, activities and events sponsored by, conducted by, or permitted by the City.

**SECTION VII:** Sec. 38-166. Permit required for sound trucks and sound amplifying devices. Section 38-166 is hereby deleted in its entirety.

**SECTION VIII:** INCONSISTENCY. If any Ordinances or parts of Ordinances are in conflict herewith, this Ordinance shall control to the extent of the conflict.

**SECTION IX:** SEVERABILITY. If any portion of this Ordinance is determined to void, unconstitutional, or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

**SECTION X:** CODIFICATION. That Sections I through VI of this Ordinance shall be codified and made a part of the City of Winter Garden Code of Ordinances; that the Sections of this Ordinance may be renumbered or relettered to accomplish such intention; the word "*Ordinance*" may be changed to "*Section*", "*Article*", or other appropriate word.

**SECTION XI:** This Ordinance shall become effective upon approval by the City Commission at its second reading.

FIRST READING: \_\_\_\_\_ June 14 \_\_\_\_\_, 2012.

SECOND READING AND PUBLIC HEARING: \_\_\_\_\_ June 28 \_\_\_\_\_, 2012.

APPROVED:

\_\_\_\_\_/S/\_\_\_\_\_  
John Rees, Mayor/Commissioner

ATTESTED:

\_\_\_\_\_/S/\_\_\_\_\_  
Kathy Golden, City Clerk

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