

**ORDINANCE NO. O2017-2**

AN ORDINANCE OF THE CITY OF WILDWOOD FLORIDA; ADDING SECTION 13-107 THROUGH SECTION 13-120 OF ARTICLE IV OF THE WILDWOOD CODE OF ORDINANCES; PROVIDING FOR NOISE CONTROL; PROVIDING FOR PURPOSE AND FINDINGS OF FACT; PROVIDING FOR DEFINITIONS AND STANDARDS; PROVIDING FOR EXEMPTIONS, ENFORCEMENT, AND ADDITIONAL REMEDIES; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the City wishes to amend the Wildwood Code of Ordinances pertaining to nuisances and nuisance abatement in order to provide increased regulation of noise and noise pollution in the City;

**WHEREAS**, the City finds that the Wildwood Police Department and other City officials regularly receive complaints regarding noise pollution and noise disturbances;

**WHEREAS**, the City finds that excessive and unnecessary noise interferes with the quality of life and can interfere with the health, safety and general welfare of the public;

**WHEREAS**, the City finds that Article II, § 7, Florida Constitution provides that adequate provision shall be made by law for the abatement of excessive and unnecessary noise; and

**WHEREAS**, the City wishes to provide the Code Enforcement Office, as well as the Wildwood Police Department the ability of enforcement and control over public nuisances created by noise or noise disturbance;

**NOW, THEREFORE, BE IT ENACTED AND ORDAINED**, by the City Commission of Wildwood, Florida, as follows:

**SECTION 1.** Section 13-107 through Section 13-120 are hereby added to the Wildwood Code of Ordinances as shown in Attachment 'A'.

**SECTION 2.** All ordinances or parts of ordinances in conflict herewith, be, and the same are hereby repealed.

**SECTION 3.** If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a Court or competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of said Ordinance.

**SECTION 4.** This Ordinance shall be effective upon adoption during the second and final reading by the City of Wildwood City Commission.

**DONE AND ORDAINED** this 13<sup>th</sup> day of February, 2017, by the City Commission of the City of Wildwood, Florida.


CITY COMMISSION

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SEAL

ATTEST:

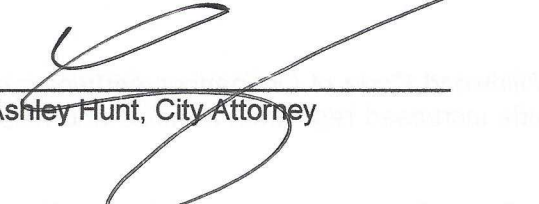
  
Cassandra Lippincott, City Clerk

  
Ed Wolf, Mayor

First Reading: 12/12/2016

Second Reading: 2/13/2017

Approved as to form:

  
Ashley Hunt, City Attorney

## ATTACHMENT A

### **Section 107. Title.**

This article shall be known and may be cited as the "Noise Control Ordinance of Wildwood, Florida."

### **Section 108. Purpose.**

The City Commission finds that the public safety and welfare of the citizens of the city is endangered by intentional conduct and activities constituting public nuisances that infringe upon the rights of others to have the quiet enjoyment of their homes, businesses, or other property and it is necessary to enact this article that both narrowly defines and prohibits conduct and/or activities that produce nuisances, and give notice to persons of what conduct is prohibited; protect the constitutional rights and freedoms of all parties; and limit the possibility of arbitrary enforcement actions.

### **Section 109. Authority.**

This article is enacted pursuant to Article II, § 7, Florida Constitution, which provides that adequate provision shall be made by law for the abatement of excessive and unnecessary noise, and under the home rule power of Wildwood, Florida.

### **Section 110. Findings of fact.**

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

(b) In particular, excessive and unnecessary noise can cause adverse psychological and physiological effects on humans.

(c) A substantial body of science and technology exists by which noise may be measured and substantially abated.

(d) The provisions and prohibitions contained in this article are enacted in pursuance of and for the purpose of securing and promoting the public health, safety, welfare and quality of life in the city for its inhabitants.

### **Section 111. Terminology, standards, and definitions.**

(a) Terminology and standards. All terminology used in this article, not specifically defined, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

(b) Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, unless the context clearly indicates a different meaning:

(1) *Agricultural zone* means the land uses where agricultural activities are legally permitted.

(2) *A-weighted sound pressure level* shall mean the sound pressure level, in decibels, as measured on a sound level meter using the A-weighting network. The level so read shall be designated as dBA.

(3) *ANSI* shall mean the American National Standards Institute, Inc. or its successor body.

(4) *Audible* means the quality or characteristic denoting that the information content of sound is unambiguously transferred to the auditor, including but not limited to the understanding of spoken speech and the comprehension of musical rhythms.

(5) *Background noise level* shall mean the sound pressure level of the all-encompassing noise emanating from a given environment, usually being a composite of sounds from many sources.

(6) *Breach of the peace* shall mean as defined in F.S. § 877.03.

(7) *Construction* shall mean any site preparation, assembly, erection, substantial repair, alteration, or similar action, for or on public or private thoroughfares, structures, utilities or similar property.

(8) *Decibel or dB* shall mean a unit for describing the amplitude of sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micronewtons per square meter.

(9) *Demolition* shall mean any dismantling, destructing or razing of structures, utilities, public or private thoroughfares, or similar property.

(10) *Development permit* shall have the meaning as described in F.S. § 163.3164.

(11) *Device* means any equipment or mechanism which is intended to produce or which actually produces sound when installed, used or operated.

(12) *Emergency* shall mean any occurrence or circumstance involving actual or imminent physical death or trauma, environmental harm, or property damage, demanding immediate emergency work or service.

(13) *Emergency work* or *emergency service* shall mean any labor performed for the purpose of preventing or alleviating, or attempting to prevent or alleviate, an emergency, or work by private or public utilities when restoring utility service.

(14) *Code enforcement officer or code officer* means any authorized agent or employee of the city whose duty it is to assure code compliance. Code officer includes any police officer. Code officer also includes any code inspector.

(15) *Equivalent sound pressure level (Leq)* shall mean a sound level descriptor based on the average acoustic intensity over time. Leq is intended as a single number

indicator to describe the mean energy or intensity level over a specified period of time during which the sound level fluctuated, Leq is measured in dB and must be A-weighted.

(16) *Impulsive sound* shall mean a sound of short duration, usually less than one (1) second and of high intensity, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, or pile driver impacts.

(17) *Industrial zone* means any geographic area designated for industrial or manufacturing activities by the zoning authority having jurisdiction over such area.

(18) *Intermittent sound* shall mean a sound of greater than one (1) second duration and less than fifteen (15) minutes. Examples of sources of intermittent sound are air compressors, heating and air conditioning units and PA speakers.

(19) *Investigating officer* shall mean the Wildwood Code Enforcement Officer and any Wildwood Police Department duly sworn law enforcement officer.

(20) *Motor vehicle* shall mean any vehicle defined as "motor vehicle" by F.S. § 320.01(1).

(21) *Loud and raucous noise* means any sound which, because of its volume level, duration and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities.

(22) *Noise or noise disturbance*, for purposes of this article, shall mean any sound produced in such quantity and for such duration that it annoys, disturbs or injures a reasonable individual of normal sensitivities, and exceeds the sound level limits set forth in this article or is plainly audible.

(23) *Noise-sensitive zone* shall mean a quiet zone where serenity and quiet are of extraordinary significance, which is open or in session. Noise-sensitive zones include schools, public libraries, churches, hospitals, nursing homes, and other areas defined as such pursuant to a resolution adopted by the board of city commissioners.

(24) *Person* shall mean an individual, association, partnership, or corporation, including any officer, employee, department, agency or instrumentality of the United States, the state or any political subdivision thereof.

(25) *Plainly audible* shall mean any noise or noise disturbance produced by any source, or reproduced by a radio, tape player, television, CD player, electronic audio equipment, musical instrument, sound amplifier or other mechanical or electronic sound making device that can be clearly heard by a person using his/her normal hearing faculties, at a distance as defined in subsection 7(b)(1) from the property line or right-of-way line of the source of the noise disturbance. When the particular sound or noise involves words or phrases, sound or noise may be deemed as "clearly heard" even though the investigating officer cannot determine the specific words or phrases being uttered or produced. The detection of a rhythmic bass reverberating type of noise disturbance is sufficient to constitute a plainly audible sound or noise.



(26) *Property line* shall mean an imaginary line along the surface of land or water, and its vertical plane extension, which separates the real property owned, rented or leased by a person from the real property owned, rented or leased by another person. Where the real property owned, rented or leased by a person abuts a waterbody, the term "property line" shall mean the established normal high water elevation of the waterbody.

(27) *Public right-of-way* shall mean any street, avenue, boulevard, highway, sidewalk, alley, or similar place normally accessible to the public which is owned or controlled by the state, county, or municipality.

(28) *Residential area* shall mean an area of Wildwood that predominantly includes residential properties, i.e., single-family and multifamily dwellings, townhouses or timeshare condominiums.

(29) *RMS (root mean square)* means the square root of the mean of a set of squared values.

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

(31) *Sound level* shall mean the weighted sound pressure level obtained by the use of a metering characteristic and weighting A as specified in American National Standards Institute specifications for sound level meters (ANSI standard 1.4-1983). If the weighting employed is not indicated, the A-weighting shall apply.

(32) *Sound level meter* shall mean an instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter, and weighting network used to measure sound pressure levels. The output meter reads sound pressure level when properly calibrated. The sound level meter shall be of Type 2 or better, as specified in the American National Standards Institute publication entitled "Specifications for Integrating-Averaging Sound Level Meters" designated as ANSI standard S1.43-1997 and any subsequent revision thereof.

(33) *Sound pressure* shall mean the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by the presence of sound energy.

(34) *Sound pressure level* shall mean a twenty (20) times the logarithm to the base ten (10) of the ratio of the root mean square sound pressure to the reference pressure of twenty (20) micronewtons per meter squared. The sound pressure level is denoted  $L_p$  (or SPL) and is expressed in decibels.

(35) *Sound-producing device* means any equipment or machine for the production or reproduction of speech, music or other sound, including but not limited to

radios, televisions, phonographs, tape players, musical instruments, compact disc or tape cassette players, walkie-talkies, CB radios, or synthesizers.

(36) *Sound truck* means any motor vehicle or any other vehicle regardless of motor power, whether in motion or stationary, having mounted upon or attached to it, any sound-amplifying equipment.

**Section 112. Maximum permissible sound levels; land use categories; times; and measurement descriptors.**

TABLE 1  
 MAXIMUM ALLOWABLE SOUND LEVEL LIMITS  
 (measured with sound level meter)

Noise Sensitive Zone	Time Averaged (LEQ)	Any time	55 dB
	Impulsive	7:00 a.m.—10:00 p.m.	60 dB
	Impulsive	10:01 p.m.—6:59 a.m.	Not allowed
Residential Area	Time Averaged (LEQ)	7:00 a.m.—10:00 p.m.	60 dB
	Time Averaged (LEQ)	10:01 p.m.—6:59 a.m.	55 dB
	Impulsive	7:00 a.m.—10:00 p.m.	65 dB
	Impulsive	10:01 p.m.—6:59 a.m.	Not allowed
Industrial Zone	Time Averaged (LEQ)	7:00 a.m.—10:00 p.m.	75 dB
	Time Averaged (LEQ)	10:01 p.m.—6:59 a.m.	75 dB
	Impulsive	7:00 a.m.—10:00 p.m.	85 dB

	Impulsive	10:01 p.m.—6:59 a.m.	85 dB
Commercial Zone	Time Averaged (LEQ)	7:00 a.m.—10:00 p.m.	65 dB
	Time Averaged (LEQ)	10:01 p.m.—6:59 a.m.	60 dB
	Impulsive	7:00 a.m.—10:00 p.m.	75 dB
	Impulsive	10:01 p.m.—6:59 a.m.	70 dB
Agricultural Zone	Time Averaged (LEQ)	7:00 a.m.—10:00 p.m.	75 dB
	Time Averaged (LEQ)	10:01 p.m.—6:59 a.m.	75 dB
	Impulsive	7:00 a.m.—10:00 p.m.	85 dB
	Impulsive	10:01 p.m.—6:59 a.m.	85 dB

**Section 113. Measurement or assessment of noise.**

(a)

*Measurement with a sound level meter.*

(1) Sound shall be measured with an integrating-averaging sound level meter satisfying at least the applicable requirements for a Type 2 meter or better, as specified in the American National Standard Institute publication entitled, "Specifications for Integrating-Averaging Sound Level Meters" designated as ANSI standard S1.43-1997.

(2) Calibration of all instruments, components, and attachments shall conform to the latest ANSI standards.

(3) Measurements of sound under this subsection shall be made by individuals trained in a noise measurement program approved by the city.



(4) Sound shall be measured outdoors, no closer than the nearest noise sensitive zone or residential area property line.

(5) All sounds shall be measured for a period not less than fifteen (15) minutes in duration, except as provided in subsections (a)(6) and (a)(7).

(6) Intermittent sounds shall be measured within a sixty-minute period. A minimum five (5) minute Leq of the sound shall be required to evaluate if a violation exists.

(7) Impulsive sounds shall be measured for only the duration of the sound.

(8) Except when site conditions are prohibitive, measurements shall be taken at approximately five (5) feet above the ground or water surface and at least five (5) feet away from any obstruction or reflecting surface.

(9) At sites with background noise levels which are at, or in excess of, the applicable allowable levels of Table 1, the maximum allowable noise level will be three (3) dB above the allowable levels of Table 1, or one (1) dB above background, whichever is greater.

(b)

*Assessment of noise without sound level meter.*

(1) No person shall create a sound that is plainly audible at the time and distance requirements set forth in the following Table 2:

TABLE 2

Underlying Land Use Category (from which noise emanates)	Time of Day	Distance
Residential Area	7:00 a.m.—10:00 p.m.	500 feet or more
	10:01 p.m.—6:59 a.m.	150 feet or more
Nonresidential Area	7:00 a.m.—10:00 p.m.	500 feet or more
	10:01 p.m.—6:59 a.m.	300 feet or more

(2) Noise disturbances in violation of subsection (b)(1) shall be confirmed by the investigating officer. The investigating officer who hears a noise disturbance that may be plainly audible shall assess the noise disturbance by measuring the distance from the property line or right-of-way line of the source of the noise disturbance according to the following standards:

a. The primary means of detection shall be the investigating officer's normal hearing faculties, provided the investigating officer's hearing is not enhanced by any mechanical or medical device, such as a hearing aid.

b. The investigating officer shall have a direct line of sight and hearing to the real property that is the source of the noise disturbance so that the investigating officer can identify the offending source of such noise disturbance and the distance involved.

#### **Section 114. Prohibited acts.**

Subject to the provisions of section 10, no person shall produce, cause to be produced, or allow to be produced, by any means, any noise disturbance on any private or public property, including a right-of-way, when such noise is plainly audible or when such noise is measured pursuant to section 7 and, where applicable, exceeds the applicable sound level limits set forth in section 6.

#### **Section 115. Persons responsible.**

(a) It shall be a violation of this article for any owner, lessee or other person in charge of or in control of premises or a vehicle to allow or permit any loud and raucous noise to emanate from such premises or vehicle. The owner of property, a tenant, a lessee, a manager, an overseer, an agent, corporation or any other person entitled to lawfully possess or who claims unlawful possession of such property at a particular time involved shall each be responsible for compliance with this article, and each may be punished for violation of this article. Notwithstanding the fact that a lessee is solely in charge or control of a premises, an owner shall still be deemed a responsible person under this article.

(b) Any loud and raucous noise made or produced at premises or in a vehicle in which the owner, lessee or other person in control is present shall be presumed and deemed to be made and produced with the consent and permission of the said owner, lessee or other person in charge or control.

(c) Any owner, lessee, agent, supervisor, or other person in charge of operating, ordering, directing or allowing the operation or maintenance of any device or machine creating a loud and raucous noise as prohibited in this article, shall be deemed guilty of violating this article.

(d) It shall not be lawful defense to assert that some other person caused such sound, but each lawful possessor or claimant of the premises shall be responsible for operating or maintaining such premises in compliance with this article and shall be punishable, whether or not the person actually causing such sound is also punished.

## **Section 116. Exemptions.**

(a) The provisions of sections 6 and 7 shall not apply to the following sounds:

(1) Lawn maintenance activities, including the operation of lawn mowers, edgers, trimmers, power driven hedge shears, and other standard lawn maintenance equipment, from 7:00 a.m. until 10:00 p.m.;

(2) Railway locomotives or cars activity conducted in accordance with federal laws and regulations;

(3) Church or clock carillons, bells or chimes from 7:00 a.m. until 10:00 p.m.;

(4) Religious worship activities, including but not limited to bells and organs, as long as such noise, because of its volume level, duration and character does not annoy, disturb, injure or endanger the comfort, health, peace or safety of a reasonable person of ordinary sensibilities.

(5) Aircraft and airport activity conducted in accordance with federal laws and regulations;

(6) Law enforcement activities, including training;

(7) Emergency signals during emergencies;

(8) Emergency signal testing between 7:00 a.m. and 7:00 p.m.;

(9) Emergency work or emergency service;

(10) Cries for emergency assistance and warning calls;

(11) Fire alarms and burglar alarms, prior to the giving of notice and a reasonable opportunity for the owner or tenant in possession of the premises served by any such alarm to turn off the alarm;

(12) Generators used during or as a result of an emergency;

(13) Motor vehicles operating on a public right-of-way subject to F.S. § 316.293 and applicable federal criteria;

(14) Refuse collection vehicles, including street sweepers, while in the process of performing their intended activities;

(15) Construction or demolition activities, other than the placement of concrete as described in subsection (13) below, for which the county has issued a development permit, provided such activity occurs between 7:00 a.m. and 10:00 p.m.;

(16) Placement of concrete associated with nonresidential development activities, for which the county has issued a development permit, when conducted between 3:00 a.m. and 10:00 p.m. If placement of concrete is planned to occur prior to 7:00 a.m., notice shall be provided to surrounding residential areas or noise sensitive

zones with a minimum of forty-eight (48) hours notice prior to commencement of this activity. A copy of the notice and distribution list shall be provided to the code enforcement officer at least forty-eight (48) hours prior to commencement of this activity;

(17) Construction activities related to city, county, state or federal roads, highways or freeways;

(18) Scheduled organized activities at a publicly-owned or operated facility;

(19) Activities on or in city and school athletic facilities and on or in publicly owned property and facilities, provided that such activities have been authorized by the owner of such property or facilities or its agent;

(20) The supervised public display of fireworks by organizations or groups of individuals for which the organizer has been issued a special outdoor event permit by Wildwood, provided it is conducted in accordance with such permit, or other lawful use of fireworks;

(21) Unamplified human voices;

(22) Nonamplified crowd noises resulting from activities such as those planned by student government, community groups or racing/sport events are exempt;

(23) All noises coming from the normal operations of railroad trains are exempt;

(24) Parades and outdoor events for which the organizer has been issued a special outdoor event permit by Wildwood, provided it is conducted in accordance with such permit;

(25) Farm equipment, farm machinery or other noise consistent with a lawfully permitted use within an agricultural zone classification; however, this exception shall not apply to animal noise;

(26) The operation of tow trucks while assisting motorists or towing disabled vehicles; and

(27) Air conditioners are exempt from provisions of Table 1 when the equipment is functioning in accord with the manufacturer's standard mufflers and noise-reducing equipment in use and in proper operating condition according to standards promulgated by the American Refrigeration Institute. The same exception shall apply to lawn mowers and agricultural equipment during daylight hours.

(28) PA systems implemented for use to provide lifesaving information, such as weather alert systems.

(b) *Special permits.* Applications for a permit for relief from the maximum allowable noise level limits designated in this article may be made in writing to the City Manager or his duly authorized representative. Any permit granted by the City Manager under this subsection

must be made in writing and shall contain all conditions upon which the permit shall be effective. The city manager or his duly authorized representative may grant the relief as applied for under the following conditions:

(1) The City Manager may prescribe any reasonable conditions or requirements as he deems necessary to minimize adverse effects upon the community or the surrounding neighborhood, including use of mufflers, screens or other sound-attenuating devices.

(2) Permits may be granted for the purpose of entertainment under the following conditions:

- a. The function must be open to the public (admission may be charged);
- b. The function must take place on public property;
- c. The permit will be given only for four hours in one 24-hour day;  
and
- d. The function must be staged between the hours of 9:00 a.m. and 12:00 midnight.

(3) Special permits for nonentertainment special purposes may be issued under the following conditions:

- a.
  1. If the special purpose relates to the operation of a trade or business, that the special purpose not be in the ordinary course of that trade or business; and
  2. If the special purpose does not relate to the operation of a trade or business, that the special purpose not be an ordinary event in the affairs of the applicant.
- b. If the special purpose be a recurring purpose, that it not recur more often than four times each calendar year;
- c.
  1. That the special purpose be absolutely necessary to the operation of the applicant's trade or business; or
  2. If the special purpose does not relate to the operation of the trade or business, that the special purpose be compatible with the ordinary activities of the neighborhood in which the special purpose is to occur;

d. Except in emergency situations, as determined by the city manager, the special permit may be issued only for four hours between 7:00 a.m. and 11:00 p.m. on weekdays; and

e. Special permits may be issued for no longer than 15 consecutive days, renewable by further application to the City Manager.

(4) No permit may be issued to permit the use of any loudspeaker or sound-amplifying device on the exterior of any building that at any time exceeds the sound level limits in Table 1 of this article, except those used for emergency warnings.

**Section 117. Enforcement/penalty.**

(a) Enforcement

(1) It shall be unlawful for any person to violate any provisions of this article, or any provisions of any resolution enacted pursuant to this article. The provisions of this article may be enforced by notice of violation or civil citation. Each violation shall be considered a separate offense. Any person who continues to violate the provisions of this article after having been previously cited may be subject to further citations, including further citations issued on the day upon which the original citation was issued

(2) The police department is empowered to enforce this part through citation issuance. The police department shall be authorized, but not required, to give a verbal warning to any alleged violator of this Section prior to the issuance of a formal citation.

(3) Master Planned Communities and properties subject to Planned Developments may be exempt from certain provisions of these Sections 13-107 through 13-120 by entering into an agreement with the City of Wildwood. Such agreements shall detail specific provisions of the exemption. Any provisions of Section 13-107 through 13-120 not covered in any such agreement shall remain enforceable.

(b) Penalty

(1) Penalty for infraction. It is a civil infraction to violate any provision of this article. The civil penalty for such infraction is as follows:

(a) First violation, fine of \$50.00.

(b) Second violation within six (6) months, fine of \$100.00.

(c) Third and subsequent violations within six (6) months, fine of \$500.00 per violation.

Unless the violation is, by its nature, uncorrectable within a 24-hour period, each occurrence shall constitute a separate violation. Nothing in this ordinance shall prohibit the issuance of multiple citations during a single 24-hour period for the same noise source if the violation is correctable.



(2) Issuance of citation. Any investigating officer who has probable cause to believe that a person has committed an act in violation of this part, may issue a citation therefore.

(a) Options upon receiving citation. Any person issued a citation pursuant to this part may:

- (1) Pay the civil penalty, whether by mail or in person; or
- (2) Contest the citation in county court.

(b) Electing to contest citation. Any person electing to contest the citation and choosing to appear in County court shall be deemed to have waived the limitations on the civil penalty specified in subsection "A" of this section. The court, after hearing, shall make a determination as to whether an infraction has been committed. If the commission of a violation has been proven, the court may impose a civil penalty not to exceed \$500.00.

(c) Refusal to sign citation. Any person who willfully refuses to sign the citation issued by the police officer is guilty of a misdemeanor of the second degree, punishable as provided in F.S. § 775.082, 775.083, or 775.084. This violation shall be enforced by an officer of the police department.

(d) Failure to pay fine. Any person who has not requested a hearing and who has not paid the fine specified in subsection (b)(1) of this section within ten (30) days is guilty of a misdemeanor of the second degree, punishable as provided in F.S. § 775.082, 775.083, or 775.084. This violation may be enforced by an officer of the police department or by the issuance of a warrant through the court.

(e) Court appearance. If any person fails to pay the civil penalty or fails to appear in court to contest the citation as required by subsection (b)(4) of this section, the court may issue an order to show cause upon the request of the City. This order shall require such person to appear before the court to explain why action on the citation has not been taken. If any person, who is issued such order fails to appear in response to the court's directive, that person may be held in contempt of court.

(3) Notice of Violation. Any person not in compliance with this article, or any provisions of any resolution enacted pursuant to the authority of this article, shall be punished as provided in section 1-7.

### **Section 118. Declaration of Public Nuisance and Alternate Enforcement Procedure**

(a) The issuance of one or more citations or notices of violation for noncompliance with this article on four (4) or more separate occasions within a six (6) month period is hereby declared to be a public nuisance.

(b) If on four (4) or more separate occasions within a six (6) month period, any residential building, place of commercial business or other property has been the location of the issuance of one or more citations or notices of violation for noncompliance under this article regarding excessive noise, including any music, musical instruments, or other sound-producing device or raucous outdoor gatherings such as crowds assembled in a public or private parking lot (excluding any music or outdoor gatherings for which a special events permit has been issued under this Code), then the following enforcement provisions may be utilized.

(c) Any residential building, commercial business or other property determined in the enforcement process set forth below to have met the conditions enumerated in subsection (a) of this section may be declared to be a public nuisance, and the owner or tenant thereof, or both when evidence so justifies, may be subjected to the penalties specified in this section.

(d) This section shall be enforced by the special magistrate designated by the city to hear code enforcement cases, utilizing the procedures set forth below.

(e) A complaint may be initiated by any code enforcement officer or police officer of the city, by the building official, by the community development department, or by any citizen. The procedure for the filing and processing of a complaint is as follows:

(1) All complaints shall be in writing and under oath, and shall contain the name and mailing address of the complainant (for complaints initiated by any city employee that shall be the address of the city); the name and address of the commercial business or the address of the residential structure which is the subject of the complaint; the name and address of the property owner (and if not owner-occupied, the name and address of the tenant) of the premises which are the subject of the complaint, if known; and a detailed description of the facts which the complainant believes justify a determination that the premises is in violation of this section and is a public nuisance.

(2) Once a complaint is filed, the City Manager or his designee shall review the complaint to determine that it is sufficient on its face to allege properly the existence of a public nuisance. If the complaint is deemed sufficient on its face, the city shall investigate the premises to determine the name and address of the property owner and tenant. For the property owner, the information on the Sumter County Property Appraiser's records shall be considered prima facie evidence of the name and mailing address of the owner. For the tenant, where applicable, the records of the customer service department of the city reflecting the name and address of the utility customer at the location shall be deemed prima facie evidence of the identity and address of the tenant.

(3) After the complaint is deemed sufficient on its face and the name and address of the property owner and tenant, if any, have been determined, the complaint shall be set for hearing before the special magistrate. The property owner and tenant, if any, shall be given written notice by both certified mail, return receipt requested, and regular first class mail, and by posting at the premises, not less than fifteen (15) calendar days prior to the scheduled hearing date, informing them of the filing of the complaint,

the facts alleged as a basis for the allegation that the premises has violated this article, and of the date, time and location of the public hearing. The notice shall also inform the tenant and property owner that to prosecute any appeal of the special magistrate's decision will require a verbatim record of the hearing which the City does not provide and that it will be the responsibility of the property owner or tenant to provide for that verbatim record of the proceedings. A copy of this section shall be included in each notice. Due to the serious nature of the penalties which may be imposed hereunder, constructive notice by publication or posting alone may not be the basis for a public hearing under this section. However, the city may in its sole discretion serve a tenant or property owner personally by hand delivery, provided that service by hand delivery shall not eliminate the need to serve the notice by certified mail, regular mail and posting at the premises.

(f) A public hearing on the complaint shall be held at the date and time set forth in the notice to the property owner and tenant. A property owner or tenant may request one (1) postponement of the public hearing for not more than thirty (30) days, for good cause, which request shall be granted by the special magistrate in the absence of a showing by the city or the complainant that the postponement will prejudice them in any way.

(g) At the public hearing, all testimony shall be given under oath. Strict rules of evidence shall not apply but the special magistrate may take into account the persuasive value of evidence such as hearsay which would be inadmissible in a court of law. The city or citizen complainant shall proceed first, to present the evidence in support of the assertion that the property in question constitutes a public nuisance. The property owner, and tenant if any, shall then be entitled to present evidence in defense of the proposition that the property does not constitute a public nuisance. Each party may cross examine the witnesses of the other. Documentary evidence may be presented, however the special magistrate shall have discretion to reject or give lesser weight to any documentary evidence which is inadmissible in a court of law, such as hearsay or documents which are not properly authenticated. Following the presentations by the city or citizen complainant, the property owner and tenant, members of the general public in attendance may be allowed to speak under oath at the discretion of the special magistrate, provided that anyone speaking shall be subject to cross examination by the city or citizen complainant, the property owner and the tenant.

(h) At the conclusion of the public hearing, the special magistrate shall announce a determination whether, based on the testimony and evidence presented, the property constitutes a public nuisance under this section. If a nuisance is determined to exist, and the property is occupied by a tenant, the order shall specify whether the nuisance is attributable solely to the acts or failure to act of the tenant, or whether the property owner is also complicit in the nuisance.

(i) If the property is found to be a public nuisance, the special magistrate may impose any of the following penalties and sanctions:

(1) Fines of up to two hundred fifty dollars (\$250.00) per day for each day the property is determined to have been operated as a public nuisance;

provided that if the property has been determined to be a public nuisance in an earlier proceeding under this section then the fine may be up to five hundred dollars (\$500.00) per day for a recurring public nuisance, and provided further that the total fines imposed under this section on any parcel shall not exceed fifteen thousand dollars (\$15,000.00);

(2) Entry of an order requiring the property owner to adopt such rules and procedures as may be appropriate under the circumstances to abate the nuisance;

(3) Entry of an order with a duration determined by the special magistrate, not to exceed one (1) year, prohibiting the conduct which is found to have constituted a public nuisance and reserving jurisdiction over the property to the special magistrate for a period up to one (1) year;

(4) Imposition of an additional monetary penalty equal to the reasonable costs and reasonable attorneys' fees incurred by the city in the investigation of the public nuisance and the prosecution of the proceedings under this section leading to the determination of public nuisance;

(5) For the third determination of public nuisance under this section on the same property within any one-year period, the special magistrate may issue an order with a duration not to exceed one (1) year, prohibiting the operation of the premises including closure of the place or premises or any part thereof, and the conduct, operation or maintenance of any business or activity on the premises which is conducive to the activities found to constitute a public nuisance;

(6) Requiring the recordation in the Public Records of Sumter County, Florida, of the order finding the existence of a public nuisance in order to provide notice to subsequent purchasers, successors in interest, or assigns of the real property that it is subject to the order; and

(7) Requiring the recordation of the order imposing any fines or monetary penalties as a lien against the real property in question, and providing for the foreclosure of such lien and recovery of all costs, including reasonable attorneys' fees, incurred in the foreclosure process.

Copies of all orders entered under this section shall be served on the parties in the same manner provided herein for service of notice of the public hearing. Notwithstanding anything to the contrary in this section, the penalties provided for under subsections (1), (4), (5), and (7) above shall not be levied against an owner of real property if the nuisance found to exist is due solely to the acts of a tenant in the property in which the property owner is found not to have been complicit, and the property owner evicts the tenant within ninety (90) days after notification of entry of an order finding the existence of a public nuisance attributable solely to the acts or failure to act of the tenant.

(j) Any party aggrieved by the decision of the special magistrate may initiate an appeal of the decision to the Circuit Court in Sumter County, Florida, by filing a notice of appeal with the City Manager which is received by the city manager no later than thirty (30) days after entry of the order being appealed. The appeal shall be governed by the Florida Rules of Appellate Procedure in all respects. No appeal shall act as a stay of the order under appeal unless the appellant seeks a stay of the order from the circuit court and files a supersedeas bond in the amount determined by the circuit court.

(k) This section is intended to be a supplemental and nonexclusive method of adjudicating and penalizing public nuisances. Its enactment shall not be construed to limit the rights of the City of Wildwood or any citizen to proceed against an alleged public nuisance in any other manner permitted by law or in equity including seeking declaratory or injunctive relief, including, but not limited to, proceeding under F.S. § 60.05.

#### **Section 119. Additional remedies.**

The operation or maintenance of any device, instrument, vehicle or machinery in violation of any provisions of this article that endangers the comfort, repose, health and peace of residents in the City is declared to be a public nuisance; and the City is authorized to pursue any and all remedies. Nothing in this article shall be construed to limit any private right of action.

#### **Section 120. Loud, disturbing or unnecessary noises.**

(a) Some sounds may be such that they are not measurable or may not exceed the limits set out in this article, but they may be excessive, unnatural, prolonged, unusual and are a detriment to the public health, comfort, convenience, safety, welfare or prosperity of the residents of the city.

(b) With the exception of those exemptions provided by state law, noises prohibited by this article are unlawful notwithstanding the fact that no violation of section 7 is involved, and notwithstanding the fact that the activity complained about may be exempted in section 10.

(c)

Thus, the following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this article; but this enumeration shall not be deemed to be exclusive:

(1) *Engine exhaust.* The discharge into the open air of the exhaust of any steam engine or internal combustion engine, whether stationary or moving, except through a muffler or other device which will effectively prevent loud and raucous noises therefrom.

(2) *Operation of equipment at night, on Sundays.* The operation between the hours of 8:00 p.m. and 7:00 a.m., on any day or at any time on Sunday, of any pile driver, steam shovel, pneumatic hammer, derrick, dredge, steam or electric hoist or other appliance, machine or equipment, the use of which is attended by loud and raucous noise.

(3) *Blowers.* The operation of any blower or power fan or any internal combustion engine, the operation of which causes loud and raucous noise, unless the noise from such blower or fan is muffled or such engine is equipped with a muffler device sufficient to prevent loud and raucous noise.

(4) *Horns, signaling device, etc.* The sounding of any horn, whistle or other audible signaling device so as to create a loud and raucous noise.

(5) *Radios, televisions, amplifiers, or other sound-producing device.* The using, operating or permitting to be played, used or operated any radio, stereo, television, amplifier, musical instrument, phonograph or other device for the producing or reproducing of sound in such manner as to cause loud and raucous noise by any person present and in control of such device or by any person present and in control of the premises wherein such device is located.

(6) *Sound trucks.* No amplifier or loudspeaker in, upon or attached to a sound truck or other device for amplifying sound shall be operated or permitted to operate within the unincorporated county for advertising purposes or to attract the attention of the public. Ice cream trucks shall be specifically exempt from the prohibitions contained herein.

(7) *Yelling, shouting, etc.* Yelling, shouting, whistling or singing at any time or place so as to create a loud and raucous noise between the hours of 10:00 p.m. and 7:00 a.m. on any day.

(8) *Defect in vehicle or load.* The use of any motor vehicle so out of repair, so loaded or in such manner as to create loud grating, grinding, rattling or other loud and raucous noise or which is not equipped with a muffler in good working order and in constant operation so as to prevent loud and raucous noise.

(9) *Construction or repairing of buildings.* The erection, including excavating or demolition, alteration or repair of any building so as to create a loud and raucous noise between the hours of 8:00 p.m. and 7:00 a.m. the following day, or at any time on Sunday, except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the building division. Such permit may be granted for a period not to exceed three working days or less while the emergency continues and may be renewed for successive periods of three days or less while the emergency continues. If the building division should determine that the public health and safety necessitates the issuance of such a permit and will not be impaired by the erection, demolition, alteration or repair of any building or the excavation of streets and highways between the hours of 8:00 p.m. and 7:00 a.m., or on Sunday, the building division may grant permission for such work to be done between such hours or within a shorter time period during such hours, upon application being made at the time the permit for the work is issued or during the progress of the work; provided, however, that the making of minor repairs and alterations to a building by the owner or occupant thereof between the hours of 9:00 a.m. and 6:00 p.m. on Sundays shall not be within the proscription of this subsection.



(10) *Creation of noise near schools, public buildings, churches, hospitals.* The creation of any loud and raucous noise heard within any school, public building, church or any hospital, or the grounds thereof, while in use, which interferes with the workings of such institution, or which disturbs or annoys patients in the hospital.

(11) *Noises used to attract attention.* The use of any drum or other instrument or device to create a loud and raucous noise.

(12) *Dropping or throwing objects.* The unnecessary dropping or throwing of objects on or against the ground, pavement, concrete walk or other object so as to create loud or unnecessary clanging, grating, rattling or other noise.

(13) *Steam whistles.* The blowing of any train whistle or steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of fire or danger or upon request of county officials.

(14) *Motor vehicles.* Loud and raucous noise created by any vehicle which is self-propelled and every vehicle which is propelled by electric power from overhead trolley wires, but not operated on rails, including motorcycles or motor-driven vehicles. This section shall also prohibit the intentional and repeated creation of loud and raucous noise by watercraft. However, this provision shall not apply to motor vehicles operating on the public streets or highways of the county. No provision herein is intended to conflict or otherwise pre-empt F.S. §§ 326.272 (exhaust prevention of noise), 316.293 (motor vehicle noise), or 316.3045 (operation of radios or other mechanical devices or instruments in vehicles) or their successor statutes.

(15) *Tire screeching.* The intentional repeated creation of loud and raucous noise through the acceleration, turning or stopping of any motor vehicle.