

ORDINANCE 2011-13

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING LAKE WALES CODE OF ORDINANCES CHAPTER 12, HEALTH, SANITATION, NUISANCES, DIVISION 3, NOISE CONTROL, BY ELIMINATING PROVISIONS RELATING TO NOISE EMANATING FROM MOTOR VEHICLES; AMENDING CHAPTER 20, TRAFFIC AND MOTOR VEHICLES BY ADDING PROVISIONS RELATING TO NOISE EMANATING FROM MOTOR VEHICLES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ANY CONFLICTING ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ENACTED by the City Commission of the City of Lake Wales, Polk County, Florida:

SECTION 1. Lake Wales Code of Ordinances Chapter 12, HEALTH, SANITATION, NUISANCES, Article II, NUISANCES, is hereby amended as follows:

DIVISION 3. NOISE CONTROL.

~~Section 12-63. Operating of radios or other mechanical sound making devices or instruments in vehicles; exemptions; penalties.~~

~~(a) It shall be unlawful and shall constitute a nuisance for any person operating or occupying a motor vehicle on a street, highway or on other public or private property, to operate or amplify the sound produced by a radio, tape player, compact disc player or other mechanical sound-making device or instrument from within the motor vehicle so that the sound is;~~

~~(1) Plainly audible at a distance of one hundred (100) feet or more from the motor vehicle; or~~

~~(2) Louder than necessary for the convenient hearing by persons inside the vehicle in residential areas or areas adjoining churches, schools or hospitals.~~

~~(b) The provisions of this section shall not apply to any law enforcement motor vehicle equipped with any communications device necessary in the performance of law enforcement duties or to any emergency vehicle equipped with any communication device necessary in the performance of any emergency procedures.~~

~~(c) The provisions of this section do not apply to motor vehicles used for business or political purposes, which in the normal course of conducting such business uses sound-making devices. The provisions of this subsection shall not be deemed to prevent the city, with respect to the streets and highways within its boundaries and within the reasonable exercise of the police power, from regulating the time and manner in which such business may be operated.~~

~~(d) The provisions of this section do not apply to the noise made by a horn or other warning device permitted by F.S. § 316.271.~~

~~(e) The following penalties apply to a violation of this section:~~

~~(1) A person who violates this section shall be subject to prosecution in the name of the state in the same manner as misdemeanors are prosecuted; and, upon conviction, such person shall be punished by a fine as specified in subsection (2) below or by imprisonment in the county jail as specified in subsection (3) below or by both fine and imprisonment.~~

~~(2) Fines:~~

~~a. The fine for a first violation shall be one hundred dollars (\$100.00).~~

~~b. The fine for the second violation shall be one hundred fifty dollars (\$150.00).~~

~~c. The fine for a third violation shall be two hundred dollars (\$200.00).~~

~~d. The fine for each subsequent violation shall be five hundred dollars (\$500.00).~~

~~(3) Imprisonment:~~

~~a. The imprisonment for a second violation shall not exceed ten (10) days.~~

~~b. The imprisonment for a third violation shall not exceed thirty (30) days.~~

~~c. The imprisonment for each subsequent violation shall not exceed sixty (60) days.~~

SECTION 2. Lake Wales Code of Ordinances Chapter 20, TRAFFIC AND MOTOR VEHICLES, Article I, GENERAL PROVISIONS, is hereby amended as follows:

Section 20-5. Operating of radios or other mechanical sound making devices or instruments in vehicles; exemptions; penalties.

(a) It is the express intent of the City Commission to impose reasonable restrictions on the time, place, and manner in which noises may emanate from motor vehicles. It is a significant interest of the City to ensure the peace and peaceful repose of the citizens of Lake Wales and the City of Lake Wales has deemed that loud and unnecessary sounds from motor vehicles constitute a nuisance. The provisions of this chapter are to be interpreted in a content-neutral manner which does not penalize one form of speech over another.

(b) As used in this section the term "plainly audible" shall mean:

1. "Plainly Audible" shall mean any sound produced by a radio, tape player, or other mechanical or electronic soundmaking device, or instrument, from within the interior or exterior of a motor vehicle, including sound produced by a portable

soundmaking device, that can be clearly heard outside the vehicle by a person using his normal hearing faculties at a distance of fifty (50) feet or more from the motor vehicle.

2. Any law enforcement personnel who hears a sound that is plainly audible, as defined herein, shall be entitled to measure the sound according to the following standards:

a) The primary means of detection shall be by means of the officer's ordinary auditory senses, so long as the officer's hearing is not enhanced by any mechanical device, such as a microphone or hearing aid.

b) The officer must have a direct line of sight and hearing to the motor vehicle producing the sound so that he can readily identify the offending motor vehicle and the distance involved.

c) The officer need not determine the particular words or phrases being produced or the name of any song or artist producing the sound. The detection of a rhythmic bass reverberating type sound is sufficient to constitute a plainly audible sound.

d) The motor vehicle from which the sound is produced must be located upon (stopped, standing or moving) any street or highway as defined by Section 316.002(53), F.S. Parking lots and driveways are included when any part thereof is open to the public for purposes of vehicular traffic.

(c) It shall be unlawful and shall constitute a nuisance for any person operating or occupying a motor vehicle on a street, highway or on other public street, to operate or amplify the sound produced by a radio, tape player, compact disc player or other mechanical or electronic sound-making device or instrument from within the interior or emanating from the exterior of the motor vehicle so that the sound is plainly audible as defined above at a distance of fifty (50) feet or more from the motor vehicle.

(d) The provisions of this section do not apply to the noise made by a horn or other warning device permitted by F.S. § 316.271.

(e) The following penalties apply to a violation of this section:

(1) A person who violates this section shall be subject to prosecution in the name of the state in the same manner as misdemeanors are prosecuted; and, upon conviction, such person shall be punished by a fine as specified in subsection (2) below.

(2) Fines:

a. The fine for a first violation shall be one hundred dollars (\$100.00).

b. The fine for the second violation shall be one hundred fifty dollars (\$150.00).

c. The fine for a third violation shall be two hundred dollars (\$200.00).

d. The fine for each subsequent violation shall be five hundred dollars (\$500.00).

SECTION 3. If any clause, section or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. This ordinance shall become effective immediately upon passage by the City Commission.

CERTIFIED AS TO PASSAGE this 16th day of August, 2011.
CITY OF LAKE WALES, FLORIDA

Mike Cantan

Mayor/Commissioner
City of Lake Wales, Polk County, Florida

ATTEST:

Clara Van Bligan
City Clerk