



Lake Wales Police Department

133 East Tillman Avenue – Lake Wales, Florida 33853
(863) 678-4223 Office (863) 678-4298 Fax

Memorandum

Date: March 30, 2015
To: Honorable Mayor and City Commission
From: Troy Schulze, Deputy Chief of Police
CC: Kenneth Fields, City Manager
Christopher Velasquez, Chief of Police
Ref: Ordinance 2015-03, Operating of radios or other mechanical sound making devices or instruments in motor vehicles – 2nd Reading & Public Hearing
Synopsis: Staff is recommending a change to the Code of Ordinances by repealing City of Lake Wales Ordinance 2011-13.

RECOMMENDATION

Staff recommends that the City Commission adopt Ordinance 2015-03, after second reading and public hearing, repealing Ordinance 2011-13 concerning noise emanating from motor vehicles.

The City Commission approved Ordinance 2015-03 after first reading on March 17, 2015. The public hearing for second reading was advertised on March 28, 2015.

BACKGROUND

The repeal of the City's Ordinance will allow for enforcement of Polk County Ordinance 2014-073 within the municipal limits by any law enforcement officer. Enforcement of Polk County Ordinance 2014-073 will provide for county wide uniformity in enforcement and the enhancements for repeat violators will apply regardless of where an offender is cited in Polk County.

BACKGROUND

A recent decision of the Second District Court of Appeal in the case of State of Florida vs. Richard Catalano et.al. (2nd DCA, Case No. 2D1-973) has ruled that the Florida Statute concerning loud music from motor vehicles is

unconstitutionally vague and thus unenforceable. Our city ordinance at that time which dealt with sound making devices in vehicles mirrored the provisions of State Statute and as such suffered the same infirmities as the statute. The critical failures of the Statute, as the Court saw them, are that it seeks to prohibit content-based speech which is in violation of the First Amendment of the Constitution of the United States and that the term "Plainly Audible" as used in the statute was not sufficiently defined to prevent an arbitrary enforcement of

the law. The Court reasoned that by providing exemptions to the statute for Political or Business related purposes, the statute had the effect of encouraging a subjective standard to be placed on the noise rather than a uniform restriction of the noise.

As a result, on August 16, 2011, the City Commission adopted Ordinance 2011-13 which moved the restriction of noise from vehicles from the nuisance chapter of the Lake Wales Code of Ordinances and placed it in the Traffic section of the Code of Ordinances for the purpose of narrowly defining the conduct sought to be prohibited and provided clear direction as to the standards which enforcement personnel used to uniformly enforce the provisions of the ordinance inside the city limits of Lake Wales. The standards found in the County's recently adopted ordinance are very similar to those found in the City's ordinance to be repealed.

Repealing City Ordinance 2011-13 will provide for county wide uniformity in enforcement and the enhancements for repeat violators will apply regardless of where an offender is cited in Polk County.

Staff recommends approval.

OTHER OPTION

The Commission may choose not to repeal the current City Ordinance.

Fiscal Impact

None

Attachments

City Ordinance 2015-03

City Ordinance 2011-13

Polk County Ordinance 2014-073

ORDINANCE 2015-03

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING LAKE WALES CODE OF ORDINANCES CHAPTER 20, SECTION 20.5, TRAFFIC AND MOTOR VEHICLES, DIVISION 3, NOISE CONTROL, BY REPEALING ORDINANCE 2011-13; 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: that Section 20.5, Operating of radios or other mechanical sound making devices or instruments in vehicles; exemptions; penalties, is hereby repealed.

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 _____ day of _____, 2015.~~

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

ATTEST:

City Clerk Clara VanBlargan, MMC

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).

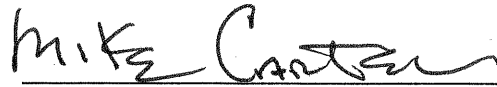
d. The fine for each subsequent violation shall be five hundred dollars (\$500.00).

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.

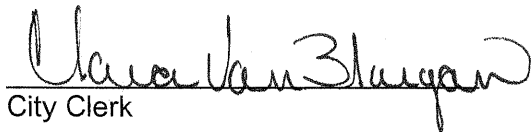
SECTION 5. This ordinance shall become effective immediately upon passage by the City Commission.

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



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

ATTEST:



City Clerk

POLK COUNTY ORDINANCE NO. 14- 073

AN ORDINANCE OF THE POLK COUNTY BOARD OF COUNTY COMMISSIONERS PROHIBITING UNREASONABLY EXCESSIVE NOISE IN MOTOR VEHICLES IN POLK COUNTY, FLORIDA; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROHIBITED ACTS; PROVIDING FOR CONFLICT WITH OTHER LAWS; PROVIDING FOR PENALTIES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR AN ASSESSMENT; PROVIDING FOR APPLICABILITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE AND AN EFFECTIVE DATE.

WHEREAS, Article II, Section 7 of the Florida Constitution states “(a) It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources;” and

WHEREAS, unreasonably loud, raucous, jarring, unseemly, disturbing, and excessive noise has been a serious problem in Polk County and problems will increase in conjunction with the growth, development, and urbanization of Polk County and changes in culture and technology; and

WHEREAS, it is the purpose of this Ordinance to prevent, prohibit, and provide for the abatement of unreasonably excessive noise in order to reasonably protect and promote the health, safety, general welfare, and the reasonable peace and quiet of the residents of Polk County; and

WHEREAS, such unreasonably excessive noise problems may not be amenable to practical measurement by decibel measuring apparatus; and

WHEREAS, unreasonably excessive noise from motor vehicle radios or other motor vehicle sound making devices is a public safety hazard which can inhibit a driver's ability to hear, as well as create a hazard and annoyance to other citizens; and

WHEREAS, such unreasonably excessive noise, as defined in this Ordinance, represents a serious threat to the public health, safety or welfare, and is irreparable or irreversible in nature; and

WHEREAS, the citizens of Polk County, Florida have the right to an environment free from such unreasonably excessive noise.

NOW, THEREFORE, BE IT ORDAINED BY THE POLK COUNTY, BOARD OF COUNTY COMMISSIONERS:

Section 1. Incorporation of Recitals.

The recitals above are fully incorporated herein.

Section 2. Purpose and Intent:

This Ordinance is not intended to limit or regulate the content of speech.

Section 3. Definitions:

For the purposes of this Ordinance the following definitions apply:

- A) "Plainly audible" means any sound produced by a radio or other mechanical or electrical sound making device or instrument from within a motor vehicle, including sound produced by a portable sound making device, that can be clearly heard outside the motor vehicle by a person using his or her normal hearing faculties at a distance of fifty (50) feet or more from a motor vehicle.
- B) "Unreasonably excessive" is when the sound is plainly audible at a distance of fifty (50) feet or more from a motor vehicle.

C) "Law enforcement officer" means any sworn law enforcement officer.

Section 4. Prohibited Acts:

A) It is unlawful for any person who operates or occupies a motor vehicle in Polk County, Florida to operate or amplify the sound produced by a radio or other mechanical or electrical sound making device or instrument from within the motor vehicle so that the sound is unreasonably excessive.

B) To determine whether sound is "plainly audible," measurements shall be taken in accordance with the following:

1. The primary means of detection shall be by means of the law enforcement officer's ordinary auditory senses, so long as the law enforcement officer's hearing is not enhanced by any device, such as a microphone or hearing aid.
2. The law enforcement officer must have a direct line of sight and hearing to the motor vehicle producing the sound so that the law enforcement officer can readily identify the offending motor vehicle and the distance involved.
3. The law enforcement 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.

Section 5. Conflicts with Other Laws:

If the instance arises that the provisions or requirements of this Ordinance conflict with the requirements or provisions of any other adopted County Ordinance, then the requirements adopted in this Ordinance shall apply over any other provision in conflict therewith.

Section 6. Penalties:

In accordance with Section 125.69 Florida Statutes, any person, entity, group, representative, or corporation violating any provision of this Ordinance shall be subject to the following penalties.

- A) First offense: A fine of \$100.00.
- B) Second offence: A fine of \$250.00.
- C) Third or subsequent charge: A fine of \$500.00.

Section 7. Enforcement:

This Ordinance may be enforced by the Sheriff of Polk County and his Deputies in Polk County, Florida; and may be enforced by municipal law enforcement officers within their specific municipal jurisdictional boundaries for the municipalities that this Ordinance is effective within, as specified in Section 9 below. Fines assessed under this Ordinance shall be distributed in accordance with all applicable County Ordinances and Florida Statutes. Thereafter, remaining funds from the fines shall be distributed in the following manner: If a municipality issues a violation of this Ordinance and a fine is assessed, then 80 percent of the remaining funds shall be distributed to the municipality by the Clerk, and the Clerk shall issue the remaining 20 percent of the funds to the County. If the Polk County Sheriff's Office issues a violation of this Ordinance and a fine is assessed, then 100 percent of the remaining funds shall be distributed to the County by the Clerk.

Section 8. Assessment:

One (1) year after the effective date of this Ordinance, the Sheriff of Polk County shall provide a written report to the Polk County Board of County Commissioners assessing the

effectiveness of this Ordinance, together with any recommended changes that would enhance and further protect the public health, safety, and welfare of the citizens of Polk County, Florida.

Section 9. Applicability:

This Ordinance shall apply to unincorporated Polk County, Florida, and the municipalities within Polk County, Florida (hereinafter “municipality”), unless a municipality adopts or has adopted an ordinance on the subject matter contained herein; or unless a municipality sends a written letter to the Board opting out of this Ordinance.

Section 10 Severability:

If any section, subsection, sentence, clause, phrase or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional.

Section 11. Filing of Ordinance and Effective Date:

A certified copy of this Ordinance shall be filed with the Florida Department of State. This Ordinance shall take effect upon filing with that office.

STATE OF FLORIDA

COUNTY OF POLK

I, STACY M. BUTTERFIELD, Clerk and Auditor of the Polk County, Board of County Commissioners (“Board”) hereby certify that the foregoing is a true and correct copy of Ordinance No. 14- 073 which was adopted by the Board on the 11th day of December, 2014.

WITNESS my hand and official seal of said Board this 16th day of December

2014.

STACY M. BUTTERFIELD,

Clerk and Auditor of the Board

By: Alison Prewatt
Deputy Clerk



STATE OF FLORIDA)
)
COUNTY OF POLK)

I Stacy M. Butterfield, County Clerk and Comptroller for Polk County, Florida, hereby certify that the foregoing is a true and correct copy of Ordinance No.14-073 adopted by the Board on December 16th, 2014.

WITNESS my hand and official seal on this 16th day of December, 2014.

STACY M. BUTTERFIELD, CLERK

By: Alison Prevatt
Alison Prevatt
Deputy Clerk





FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

December 16, 2014

Ms. Alison Prevatt
Deputy Clerk
Finance and Accounting
Post Office Box 988
Bartow, Florida 33831-0988

Dear Ms. Prevatt:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Polk County Ordinance No. 14-073, which was filed in this office on December 16, 2014.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb

