

ORDINANCE NO. 2021-22

AN ORDINANCE OF THE CITY OF WEST MELBOURNE, FLORIDA RELATING TO NOISE REGULATION AND REPEALING AND REPLACING THE PROVISIONS OF CHAPTER 26, ARTICLE II OF THE CODE OF ORDINANCES OF THE CITY OF WEST MELBOURNE, FLORIDA; ESTABLISHING MAXIMUM NOISE LEVELS AND PROHIBITING NOISE DISTURBANCES; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND SCRIVENER'S ERRORS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the purpose of this ordinance is to provide for the public health, comfort, safety, welfare, and quality of life of the citizens of the City of West Melbourne, Florida through the regulation of noise pollution and the reduction and abatement of unreasonable and excessive noise; and

WHEREAS, the residents of the City of West Melbourne have a right to an environment free from unreasonable and excessive noise, including the vibration and disturbances associated with low frequency noise; and

WHEREAS, as the City of West Melbourne grows, it must meet the challenge of effectively abating harmful noise pollution in a way that balances the sometimes conflicting interests of neighborhood residents, commercial and industrial enterprises, and institutional uses; and

WHEREAS, it is not the intent of this ordinance to interfere unduly with the individual rights to freedom of speech or religion; and

WHEREAS, Chapter 162, Florida Statutes, provides a process for counties and municipalities to enforce code and ordinance violations; and

WHEREAS, the City Council of the City of West Melbourne desires for the City to implement an array of flexible legal remedies to address violations of this ordinance; and

WHEREAS, from time to time, noise is made in residential areas of the City that is excessive and unreasonably loud for the area; and

WHEREAS, although an appropriate means of enforcement, the use of a sound measuring device by officers is a cumbersome process that is both inefficient and requires training and maintenance of sound measuring devices; and

WHEREAS, citizens wish to have noise issues addressed in an appropriate, but expeditious, manner; and

WHEREAS, while enforcement officers are oftentimes able to obtain compliance with their requests to reduce noise, there are situations in which the officers do not obtain voluntary compliance; and

WHEREAS, the provisions of this ordinance provide enforcement officers with an opportunity to enforce an easy to understand noise regulation by prohibiting noises that are "plainly audible" at designated distances from the noise-emitting property; and

WHEREAS, the “plainly audible” standard has been held by the courts of Florida to be a constitutional method of regulating noise; and

WHEREAS, the provisions of this ordinance also provide enforcement officers with technical methodologies and standards that can be implemented to protect citizens from excessive and unreasonable noise; and

WHEREAS, Article II, Section 7, of the Florida Constitution provides that adequate provisions shall be made by law for the abatement of excessive and unnecessary noise; and

WHEREAS, providing for the quietude of residential neighborhoods within the City of West Melbourne is an important governmental interest in support of the constitutional provision cited in the foregoing recital; and

WHEREAS, the City Council finds that the provisions of this ordinance serve that important interest in a fair and constitutional manner and that the adoption of this ordinance is otherwise in the best interests of the public health, comfort, safety, welfare, and quality of life of the citizens of the City of West Melbourne; and

WHEREAS, the provisions of this ordinance balance the interests of neighborhood residents, commercial and industrial enterprises, and institutional uses; and

WHEREAS, the City Council of the City of West Melbourne has the power and authority to enact this ordinance under the controlling provisions of State law such as, by way of example only, the provisions of Article VIII, Section 2 of the Florida Constitution and Chapters 162 and 166, Florida Statutes, as well as controlling case law of the State of Florida.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of West Melbourne, Brevard County, Florida:

Section 1. Legislative Findings and Intent. The foregoing Recitals are hereby ratified and incorporated as findings of the City Council and as the legislative intent of this ordinance.

Section 2. Repeal and Replacement of Chapter 26, Article II, City Code. The provisions of Chapter 26 – Environment, Article II – Noise, sections 26-31 through 26-37 of the Code of Ordinances of the City of West Melbourne, Florida are repealed in their entirety and replaced with the following:

ARTICLE II. – NOISE

Sec. 26-31. - Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Definitions of technical terms used in this article which are not defined in this section shall be obtained from publications of acoustical terminology issued by the American National Standards Institute (ANSI) or the American Society for Testing and Materials (ASTM) or their successor bodies.

Agricultural means any area that is being lawfully used for an agricultural use pursuant to the City's land development regulations.

Ambient noise sound means the surrounding or steady background sound associated with a given environment, exclusive of a particular sound being tested, being usually a composite of sounds from many sources near and far, exclusive of intruding sounds from isolated identifiable sources.

A-weighted sound level means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network on a sound level meter that meets the standards set forth in ANSI Standard S.1.4-1983 (or more recent version). The level is designated dBA.

Adjoining property means property which shares a contiguous boundary with another property.

ASTM means the American Society for Testing and Materials or its successor body or bodies.

Amplified sound means any sound or noise, including the human voice, that is increased in volume or intensity by means of electrical power.

ANSI means the American National Standards Institute or its successor body or bodies.

C-weighted sound level means the sound pressure level in decibels measured using the C-weighting network on a sound level meter that meets the standards set forth in ANSI Standard S1.4-1983 (or more recent version). The level so read is designated "dBC."

Commercial use means any area that is being lawfully used for a commercial use pursuant to the City's land development regulations.

Continuous sound means a sound which remains essentially constant in level during a period of observation.

Construction activity means any site preparation, assembly, erection, substantial repair, alteration, improvement or similar action on real property, whether publicly or privately owned, and whether above ground or below ground.

Daytime hours means 7:00 a.m. to 9:00 p.m. Sunday through Thursday, and 7:00 a.m. to 11:00 p.m. Friday and Saturday.

Decibel (dB) means a logarithmic and dimensionless unit of measure often used in describing the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).

Demolition means any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

Emergency means any occurrence or set of circumstances involving actual or imminent physical or psychological trauma or property damage which demands immediate action.

Emergency work means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency, including work necessary to restore property to a safe condition following an emergency.

Enforcement officer shall include all City code enforcement officers, police officers, and public safety aides of the City.

Impulsive sound means non-repetitive sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions and drop force impacts.

Industrial use means any area that is being lawfully used for an industrial use pursuant to the City's land development regulations.

Institutional use means any area that is being lawfully used for an institutional use pursuant to the City's land development regulations.

Leq means the average sound level.

Motor vehicle means a self-propelled vehicle not operated upon rails or guideway and including, but not limited, to automobiles, passenger cars, motorcycles, trucks, trailers, semitrailers, truck tractor and semitrailer combinations, or any other vehicle operated on the roads used to transport persons or goods.

Muffler means any apparatus consisting of baffles, chambers, or acoustical absorbing material whose primary purpose is to transmit liquids or gases while causing a reduction in sound emission at one end.

Necessary activity means any activity analyzed and determined by the City to be an activity that cannot be avoided for the purpose of construction, public safety, constitutionality, or any other activity otherwise prohibited which the City considers acceptable to be permitted for a limited period of time.

Necessary business equipment means equipment physically affixed, joined, or connected to the outside of a building, and without which a business located inside the building would not be able to operate. Examples include but are not limited to heating and air conditioning units, electrical generators, water pumps, ventilation systems, and air/water chillers.

Neighboring property means property which does not share a contiguous boundary with another property, but which is close enough in proximity to be affected by sound produced on the other property.

Nighttime hours means 9:00 p.m. to 7:00 a.m. Sunday through Thursday, and 11:00 p.m. to 7:00 a.m. Friday and Saturday.

Noise is a type of sound which disturbs a reasonable person of ordinary sensibilities or which causes or tends to cause an adverse psychological or physiological effect on a reasonable person of ordinary sensibilities. "Noise" includes, but is not limited to, low frequency sounds caused by amplified bass music that can induce vibration in building structures or human beings.

Noise disturbance means any sound or vibration or combination of sounds or vibrations which:

- (1) May disturb, annoy, or be harmful or injurious to the health or welfare of a reasonable person of ordinary sensibilities; or
- (2) Which, because of its volume or quality or time of day, tends to annoy, disturb, frighten, or otherwise cause an adverse psychological or physiological effect upon a reasonable person of normal sensitivity, or unreasonably prevents such person from being able to enjoy her or his activities of daily living; or
- (3) Exceeds the maximum allowable limits set forth in this article.

Person shall mean and include any officer, employee, department, agency, or instrumentally of the State or any political subdivision of the State and shall include a natural person and any corporation, firm, association, joint venture, partnership, or any other entity whatsoever or any combination of such, jointly and severally.

Plainly audible means any noise, sound or component of sound produced by any source, or reproduced by a radio, audio or visual equipment, sound equipment, sound amplification device, exterior loudspeaker, musical instrument and similar devices, sound amplifier or other mechanical or electronic sound making device for which any of the content of that sound is unambiguous, verifiable, and discernible above ambient levels by a person using his or her unaided hearing faculties, including, but not limited to, comprehensible musical rhythms, understandable speech, or rhythmic bass, or that can be clearly heard by a person using his or her normal hearing faculties, at a distance from the property line or right-of-way line of the source of the noise as follows:

Time of Day	Distance
Daytime hours	300 feet or more
Nighttime hours	100 feet or more

Without in any way limiting the foregoing, the detection of a rhythmic bass reverberating type of noise is sufficient to be plainly audible.

Public right-of-way means any street, avenue, boulevard, highway, sidewalk, or alley or similar place which is owned or controlled by a governmental entity and includes all property interests as set forth in the

definition of the term at Section 334.03, Florida Statutes, or its successor provisions.

Public space means any real property, including any structure thereon, which is owned or controlled by a governmental entity.

Real property boundary means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intrabuilding real property division, otherwise defined as the imaginary line along the ground surface, including its vertical extension that separates one parcel of real property from another; or the vertical and horizontal boundaries of a dwelling unit that is one unit in a multi-dwelling-unit building.

Receiving property means the property which receives the transmission of sound.

Residential use means any area that is being lawfully used for a residential use pursuant to the City's land development regulations.

RMS sound pressure means the square root of the time averaged square of the sound pressure, denoted P_{rms} .

Short duration and non-repetitive means any sound with a duration of less than thirty seconds.

Sound means an oscillation, including temporal and spatial oscillation, in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that cause compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

Sound equipment means any radio, record player, compact disc player, stereo, television, tape deck or player, Bluetooth speaker, loudspeaker, amplifier, sound truck or other device for producing, reproducing, or amplifying sounds.

Sound level means the conversion of sound pressure to a logarithmic measure called the decibel. The criteria required to properly define the sound level limits include the following:

- (1) The actual sound level limit with the frequency weighting to be used, such as A- weighting or C-weighting (e.g. 55 dBA, 60 dBC, etc. or 60 dBC, 65 dBC, etc.)
- (2) The acoustical metric to be used, such as real time measurement using fast/slow time constant, an average sound level (L_{eq}), a maximum sound level (L_{max}), etc. or a combination of multiple metrics.

- (3) The time duration of the measurement (e.g. instantaneous, time average, percentage of time sound level is not to be exceeded, etc.)

Sound level meter means an instrument which includes a microphone, amplifier, RMS detector, integrator or time average, output or display meter, and weighting networks used to measure sound pressure levels. The output meter reads sound pressure level when properly calibrated, and the instrument is of type 2 or better, as specified in American National Standards Institute 1.4-1971 as amended from time to time.

Sound pressure means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by sound energy.

Sound pressure level means 20 times the logarithm to the base 10 of the ratio of the RMS sound pressure to the reference pressure of 20 micronewtons per square meter ($20 \times 10^{-6} \text{ N/m}^2$). The sound pressure level is denoted L_p or SPL and is expressed in decibels.

Vessel means a watercraft used or capable of being used as a means of transportation on water.

Vibration means a temporal and spatial oscillation of displacement, velocity and acceleration in a solid material.

Sec. 26-32. - Statement of public policy.

The City Council finds and declares that:

- (1) Excessive noise is a serious hazard to the public health and welfare and the quality of life in a close urban society.
- (2) A substantial body of science and technology exists by which excessive noise can be substantially abated without serious inconvenience to the public.
- (3) Certain noise-producing equipment is essential to the quality of life in the community and should be allowed to continue at reasonable levels with moderate regulation.
- (4) Each person has a right to an environment reasonably free from noise which jeopardizes health, welfare, or unnecessarily degrades the quality of life.
- (5) It is the policy of this City to promote an environment free from excessive noise, otherwise properly called noise pollution, which unnecessarily jeopardizes the health and welfare and degrades the quality of the lives of the residents of this community, without unduly prohibiting, limiting or otherwise regulating the function of certain noise-producing equipment which is not amenable to such controls and yet is essential to the economy and quality of life of the community.

- (6) Noise exceeding certain levels or durations and during specific times of day can be detrimental to the health, safety, and welfare of the citizenry, and may infringe upon an individual's right to peaceful and quiet enjoyment of their activities of daily living. It is the policy of the City to prohibit noise disturbances or unreasonably loud noise from all sound sources, subject to its police power, in order to secure and promote the public health, comfort, convenience, safety, welfare, and prosperity of the citizens of West Melbourne.
- (7) Nothing in this Article is intended to deter individuals from lawfully exercising the individual right of freedom of speech and commerce, or any other freedom guaranteed under the Constitutions of the United States of America or of the State of Florida, or to unreasonably limit or restrain commercial or industrial enterprises.

Sec. 26-33. – Purpose and application.

- (a) The purpose of this Article is to establish standards for the control of noise pollution in the City by setting maximum permissible sound levels to protect the public health, comfort, convenience, safety, prosperity and general welfare.
- (b) It is the general and specific intent of this Article to implement the public policy of the City Council relative to the protection of the public health, safety and welfare with regard to the regulation of sound and noise.
- (c) This Article shall apply to the control of all noise originating within the City Limits except where a State or Federal agency has adopted a different standard or rule than that prescribed within this Article and has so preempted the regulation of noise from a particular source as to render this Article inapplicable thereto.
- (d) Except as allowed in this Article, it is prohibited and unlawful for a person to willfully engage in any activity on any premises or public space in the City, which activity produces or constitutes a noise disturbance on adjoining or neighboring properties or public spaces or otherwise violates the provisions of this Article.

Sec. 26-34. – Exempt activities or actions.

This Article shall not apply to the following:

- (1) The reasonable emission of sound for the purpose of alerting persons to the existence of an emergency when such emergency exists or is reasonably believed to exist such as, but not limited to the sound or noise of safety signals, warning devices, fire alarms, burglar alarms, civil defense alarms,

sirens, whistles and emergency pressure relief valves. Testing of a stationary emergency signaling device may occur at the same time of day each time the test is performed, but not before 9:00 a.m. or after 5:00 p.m. Any such testing shall use only the minimum cycle test time; provided, however that test times shall not exceed 60 seconds.

- (2) The reasonable emission of sound in the performance of governmental or governmentally authorized emergency work including, but not limited to, emergency vehicles in the course of performing in conjunction with the official duties of emergency personnel.
- (3) The unamplified human voice, except those activities prohibited by Section 26-35 which relates to unreasonable actions and activities.
- (4) Sounds reasonably emanating from bona fide farm operations on land classified as agricultural land by the Brevard County Property Appraiser and which are exempt from local government regulation pursuant to Section 823.14, Florida Statutes, the "Florida Right to Farm Act," as amended.
- (5) Rail and air transportation and public mass transportation vehicles, operations, and equipment relating thereto while operating in conformity with controlling Federal or State law which are preempted from regulation by the City.
- (6) Special events approved by the City subject to any conditions placed upon noise in the permit, not to exceed 95dBA or 100 dBC.
- (7) The emission of sound in the performance of military operations, exclusive of travel by individuals to or from military duty, when preempted from regulation by the City.
- (8) The emission of sound in the legal discharge of weapons or in fireworks displays permitted by the City or on such dates that fireworks are otherwise authorized by controlling State law and applicable County ordinance.
- (9) Landscape maintenance equipment with stock sound arrestor during daytime hours, provided that all equipment is reasonably operated in accordance with manufacturer's specifications and is equipped with all noise-reducing equipment in proper condition.
- (10) Motor vehicles operating on a public right-of-way in compliance with Chapter 316 and Section 403.415, *Florida Statutes*, as amended.

- (11) Any residential unit with air-conditioning or pool pump equipment when in reasonable mechanical condition operating with the standard sound and vibration control systems typically provided by the manufacturer in a sound level not to exceed 60 dBA or 65 dBC. Air conditioning units are presumed to be in reasonable mechanical condition if the unit meets the sound specifications contained in the Air Conditioning, Heating, and Refrigeration Institute's ("AHRI") Applied Directory of Certified Product Performance Variable Air Volume terminals.
- (12) Impulsive sounds which are emanating in a manner consistent with the provisions of this Article.
- (13) Sport shooting ranges in compliance with Sections 790.33 and 823.16, Florida Statutes, as amended, and operating in a manner that is preempted from regulation by the City.
- (14) Sound or noise emanating from City and school scheduled outdoor athletic events held at any City park or at any school athletic facility during daytime hours.
- (15) Sound or noise emanating from any school facility between the hours of 7:00 a.m. and 5:00 p.m.
- (16) Sound or noise emanating from City permitted concerts, street fairs, festivals, or other public celebrations produced, sponsored, or approved by the City and other similar City events held between the hours of 7:00 a.m. and 11:00 p.m. and in accordance with an associated special event permit.
- (17) Construction activity performed within the hours permitted by Sec. 26-37, provided that all equipment is operated in accordance with manufacturer's specifications and equipped with all noise-reducing equipment in proper condition.
- (18) The reasonable use of necessary business equipment, provided that such equipment is operated in accordance with manufacturer's specifications, is in good working order, and is equipped with appropriate noise-reducing equipment and any reasonable screening; provided, however, that business equipment shall not include equipment that broadcasts sound or noise from a business conducting entertainment activities.
- (19) The collection of garbage, recyclables, or yard waste between the hours of 5:00 a.m. and 9:00 p.m. or as set forth in a solid waste franchise agreement with the City.
- (20) Any other sound authorized by City permit or City contract, but only to the extent allowed by such permit or contract.

Sec. 26-35. - Specific activities prohibited.

The following actions and activities are prohibited and unlawful:

- (1) Peddling, hawking, vending or barking by shouting or raised voice within any residential or commercial area in the City including, but not limited to, shouting, crying out by peddlers, hawkers or vendors along or on a roadway.
- (2) Loading and unloading boxes, crates, containers, building materials, garbage cans, or similar objects during nighttime hours as to create a noise disturbance across a residential real property boundary.
- (3) Motor vehicle or vessel repairs, rebuilding, modifying, and testing in such a manner as to cause a noise disturbance across a residential real property boundary.
- (4) The sounding of any horn or signal device on any motor vehicle for an unnecessary or unreasonable period of time, or when directed to another person without a legitimate purpose and for the purposes of harassment.
- (5) The use of any siren upon any vehicle other than police, fire, ambulance, or other emergency vehicles.
- (6) The intentional projection, creating, making, or maintaining of any noise from any drum, cymbals, music, loudspeaker, or other instrument or device onto adjoining or neighboring properties for the purpose of attracting attention by creation of noise to any business, location, performance, show, event, sale, or display of merchandise, or place of business, except for activities permitted during a special event.
- (7) Operating any internal combustion engine including, but not limited to, an engine associated with a vessel or motor vehicle, without a muffler or other device at least as effective as that installed as original equipment by the manufacturer, which will effectively prevent loud or explosive noises therefrom.
- (8) Yelling, shouting, hooting, whistling, singing, or the making of similar noises, and loud, boisterous conduct other than normal conversation at reasonable levels, inside of or on the grounds of any public or private property during nighttime hours, so as to annoy or disturb the quiet, comfort, or repose of other persons or create a disturbance.
- (9) A noise disturbance.
- (10) Any other violation of this Article.

Sec. 26-35. - Maximum noise levels established; noise violation based on sound level meters.

- (a) Sound Level Limits. No person shall generate or cause to be generated from any source, sound which, when measured in accordance with the requirements of subsection (d) of this section, exceeds:
 - (1) 60 dBA or 65 dBC if the generating land is a residential property during daytime hours.
 - (2) 55 dBA or 60 dBC if the generating land is a residential property during nighttime hours.
 - (3) 75 dBA or 80 dBC if the generating land is a commercial or institutional use during daytime hours.
 - (4) 70 dBA or 75 dBC if the generating land is a commercial or institutional use during nighttime hours.
 - (5) 80 dBA or 85 dBC if the generating land is an industrial use during daytime hours.
 - (6) 75 dBA or 80 dBC if the generating land is an industrial use during nighttime hours.
- (b) Correction for character of sound. For any source of sound which emits a continuous tone sound, the maximum sound level limits set forth in subsection (b)(2) shall be reduced by 5 dBA or 5 dBC. For any source of sound which is of short duration and is nonrepetitive, the maximum sound level limits set forth in subsection (b)(2) shall be increased by 5 dBA or 5 dBC during daytime hours.
- (c) Correction for ambient noise sound. Corrections for ambient noise sound should be made in accordance with applicable ASTM standards.
- (d) Methods of measurements.
 - (1) Enforcement of this Article does not require the use of a sound level meter to determine compliance. However, when a sound level meter is used to determine sound levels pursuant to this Article, the standards, instrumentation, personnel, measurement procedures, and reporting procedures shall be as specified in this section.
 - (2) Sound level measurements shall be made with a sound level meter using the A-weighted or C-weighted scale which shall be set on slow response as technically appropriate.
 - (3) Sound level meters shall be serviced, calibrated, and operated as recommended by the manufacturer. Persons using the sound level meter shall be trained in sound level measurement and the operation of sound level meters.
 - (4) Sound level measurements shall be made 50 feet from the exterior building wall of the sound source, or from the sound source if outdoors, or from within the real property boundary

line of a receiving property, whichever distance to the source is less. Whether the sound level violates the prescribed limits of this section will be determined by whether the readings taken are in excess of the levels allowed from the property that is the source of the sound.

- (5) Except with regard to traffic noise and noise from other sources not connected with the sound being measured which shall not be considered in taking sound level measurements, the sound level measurement shall be averaged over a period of at least 30 seconds for purposes of determining the sound level. Sound levels may not exceed the prescribed level by more than 3 decibels or equivalent measurement at any time during the measurement period.
- (6) During sound level measurement, the microphone shall not be positioned so as to create any unnatural enhancement of the measured sound. A windscreen shall be used when technically appropriate.
- (7) In the case of noise that is impulsive or not continuous, the sound level measurement shall be taken over a period of time of at least 1 minute. Any such sound or noise that exceeds the prescribed level more than 2 times in a minute shall be deemed to exceed the prescribed sound levels.
- (8) If an enforcement officer does not have possession of a sound level meter at the time of responding to a noise complaint, sound level measurements for the purpose of determining violations of this section may not be taken using any other device, including, but not limited to, applications on cellular devices or any hand-held personal sound level meters obtained from any other source. The officer shall instead proceed under the other sections of this Article in order to determine whether a noise disturbance is occurring.

Sec. 26-36. - Noise disturbance prohibited; noise violation based on plainly audible standard.

- (a) It is prohibited and unlawful to cause a noise disturbance.
- (b) Noise determined to be a noise disturbance may be confirmed by an enforcement officer when the officer actually witnesses the sound or noise personally and the noise disturbance is plainly audible without using a sound level meter.
- (c) Citations may be issued based upon statements and evidence obtained from complaining witnesses when the enforcement officer determines that such evidence is reliable, appropriate, and sufficient.
- (d) Although it is preferable for enforcement officers to use a sound level meter as their primary means of detection, when in the field in many

circumstances, the officer's normal hearing faculties will need to be the means of detection, provided the officer's hearing is not enhanced by any mechanical or medical device, such as a hearing aid. In such circumstances, the enforcement officer shall have a direct line of sight and hearing to the real property that is the source of the noise so that the officer can identify the offending source of such noise and the distance involved. The enforcement officer shall assess the noise according to the following standards, factors and considerations:

- (1) The volume of the noise.
- (2) The intensity of the noise.
- (3) Whether the nature of the noise is usual or unusual.
- (4) Whether the origin of the noise is natural or unnatural.
- (5) The volume and intensity of the background noise, if any.
- (6) The proximity of the noise to residential sleeping facilities.
- (7) The nature and zoning of the area from which the noise emanates.
- (8) The density of the inhabitation of the area from which the noise emanates.
- (9) The time of the day or night the noise occurs.
- (10) The duration of the noise.
- (11) Statements of any complaining witnesses, including any pictures or audio/video documentation produced by complaining witnesses.
- (12) Whether the noise is recurrent, impulsive, intermittent, or constant.

Sec. 26-37. – Construction; hours of operation; exception; permit.

- (a) It is prohibited and unlawful for a person to operate or permit the operation of any tools or equipment in construction activity, drilling, or demolition work of any type or nature, outside of the hours of 7:00 a.m. to 9:00 p.m. Monday through Friday and 9:00 a.m. to 5:00 p.m. on Saturday and Sunday, except for emergency work or as permitted pursuant to subsection (b).
- (b) Upon application to the Building Official, a contractor may be approved to exceed the time limitations set forth in this section. Such approval shall be in the form of a permit that shall set forth the days and time frame in which the time limits may be exceeded, and the duration of the permit. The approval shall be based upon the applicant demonstrating by clear and convincing evidence that the public health, safety and welfare will not be materially harmed, and that there are bona fide construction requirements which support the time limits being exceeded.

Sec. 26-38. – Enforcement, warning and penalties.

The authority to enforce the provisions of this Article shall be vested in enforcement officers. Nothing in this section shall prohibit the sworn law enforcement officers identified as enforcement officers from charging persons responsible for acts, which affect the peace and quiet of other persons, for breach of the peace or disorderly conduct under section 877.03, Florida Statutes, as may be amended from time to time. This section shall be enforced by an enforcement officer as follows:

- (a) When an enforcement officer determines that the noise level limits established in this Article have been exceeded or that a noise disturbance exists, the officer shall issue a warning to the person or persons responsible for the noise.
 - (1) The warning shall advise the person or persons of the allowable noise limits, and of the possible penalty if they fail to eliminate or reduce the noise to such allowable limits. The officer shall document the warning in writing, recording the date, time, property address, and name or identity of the person given the warning.
 - (2) After the person or persons responsible for the noise are given such warning, a reasonable time to comply with the warning shall be given. A reasonable time shall generally be deemed immediately or so long as it would take a reasonably diligent person to reduce the noise level, but shall not exceed five minutes.
 - (3) If the noise level is not eliminated or reduced to allowable limits within the reasonable time after the warning was given, or if the person or persons so warned comply with the warning, but violate this Article again in a like manner within 48 hours of the first warning, the enforcement officers may issue a notice of violation or citation to the person or persons so warned and not complying shall be subject to the penalties set forth in this section. Each violation of this Article shall constitute a separate and distinct offense for which a civil citation or notice of violation may be issued.
- (b) Any person who violates any provision of this Article may be issued a citation for a noncriminal infraction punishable by a civil penalty not to exceed \$500 as provided by Section 1-16.
- (c) Violations of this Article may also result in the issuance of a notice of violation and the initiation of code enforcement proceedings as provided in Chapter 2, Article II of this Code. If the person

responsible for a violation of this Article is not the property owner, the property owner will be issued of notice of violation. Violations of this Article are considered irreparable and irreversible in nature.

- (d) In addition to the specific remedies set forth in this Article, the City may pursue any and all remedies available to the City under controlling law in any forum or process available to the City.

Section 3. Conflicts. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. Severability. The provisions of this ordinance are declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held by a court of competent jurisdiction to be invalid or unenforceable, such decision shall not affect the validity of the remaining terms, provisions, clauses, sentences, or sections of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in Code; scrivener's errors. It is the intention of the City Council of the City of West Melbourne that the provisions of this ordinance shall be made a part of the City of West Melbourne Code of Ordinances, and the sections and following articles may be renumbered to accomplish such intention. Typographical errors and other matters of a similar nature that do not affect the intent of this ordinance, as determined by the City Clerk and City Attorney, may be corrected with the endorsement of the City Manager, or designee, without the need for a public hearing.

Section 6. Effective Date. This ordinance shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of West Melbourne, Brevard County, Florida, this 19th day of October, 2021.

1st READING: October 5, 2021

2nd READING: October 19, 2021