

ORDINANCE NO. 2023-__

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, RELATING TO NOISE REGULATION; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; REPEALING AND REPLACING THE PROVISIONS OF CHAPTER 46 – ENVIRONMENT, ARTICLE IV. – NOISE OF THE BREVARD COUNTY CODE OF ORDINANCES; PROVIDING DEFINITIONS; PROVIDING A STATEMENT OF PUBLIC POLICY, PURPOSE AND APPLICATION; ESTABLISHING MAXIMUM NOISE LEVELS; PROHIBITING NOISE DISTURBANCES; PROVIDING FOR ENFORCEMENT, PENALTIES, AND EXCEPTIONS; REPEALING AND REPLACING THE PROVISIONS OF CHAPTER 62 – LAND DEVELOPMENT REGULATIONS, ARTICLE VI. – ZONING REGULATIONS, DIVISION 6. – SUPPLEMENTAL REGULATIONS, SUBDIVISION III. – PERFORMANCE STANDARDS, SECTION 62-2271. – NOISE OF THE BREVARD COUNTY CODE OF ORDINANCES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; 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 unincorporated areas of Brevard County, Florida through the regulation of noise pollution and the reduction and abatement of unreasonable and excessive noise; and

WHEREAS, the residents of the unincorporated areas of Brevard County, Florida have a right to an environment free from unreasonable and excessive noise, including the vibration and disturbances associated with low frequency noise; and

WHEREAS, Brevard County 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 Board of County Commissioners of Brevard County, Florida desires for the County 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 County 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, this ordinance provides 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 unincorporated areas of Brevard County, Florida is an important governmental interest in support of the constitutional provision cited in the foregoing recital; and

WHEREAS, the Board of County Commissioners 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 unincorporated areas of Brevard County, Florida; and

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

WHEREAS, the provisions of this ordinance amending the Brevard County land development regulations are not intended to be more restrictive or burdensome than the existing regulations with regard to the review, approval, or issuance of a site plan, development permit, or development order, as those terms are defined by section 163.3164, Florida Statutes; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida 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 1 of the Florida Constitution and Chapters 125 and 162, Florida Statutes, as well as controlling case law of the State of Florida.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Brevard County, Florida:

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

Section 2. Repeal and Replacement of Chapter 46, Article IV, County Code.

The provisions of Chapter 46 – Environment, Article IV – Noise, of the Code of Ordinances of Brevard County, Florida are repealed in their entirety and replaced with the following:

ARTICLE IV. – NOISE

Section 46-126. - 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 County’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 County’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 10:00 p.m.

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 means all officers authorized to enforce the provisions of this article, including, but not limited to, Brevard County code enforcement officers and the county sheriff and his duly authorized deputies.

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 County'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 County to be an activity that cannot be avoided for the purpose of

construction, public safety, constitutionality, or any other activity otherwise prohibited which the County 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 10:01 p.m. to 6:59 a.m.

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 visual equipment, sound equipment, sound amplification device, exterior loudspeaker, musical instrument and similar devices, 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	150 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.

Pure tone means any sound which can be distinctly heard as a single pitch or as a set of single pitches.

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 County'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 dBA, 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, or acceleration in a solid material.

Section 46-127. - Statement of public policy.

The Board of County Commissioners 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 county 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 county 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 Brevard County.
- (7) Nothing in this article is intended to deter individuals from lawfully exercising the individual right of freedom of speech, 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.

Section 46-128. – Purpose and application.

- (a) The purpose of this article is to establish standards for the control of noise pollution in the unincorporated areas of Brevard County 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 Board of County Commissioners 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 unincorporated areas of Brevard County 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 unincorporated areas of Brevard County, which activity produces or constitutes a noise disturbance on adjoining or neighboring properties or public spaces or otherwise violates the provisions of this article.

Section 46-129. – 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, emergency pressure relief valves, cries for emergency assistance, and warning calls. 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, radios, sirens, horns, and bells on emergency vehicles while performing in conjunction with the official duties of emergency personnel.
- (3) The unamplified human voice, except those activities prohibited by section 46-130 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 county.
- (6) Special events approved by the county, within such hours as may be imposed as a condition for the issuance of the permit and subject to any limitations placed upon noise in the permit.

- (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 county.
- (8) The emission of sound in the legal discharge of weapons or in fireworks displays permitted by the county 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 between the hours of 7:00 a.m. and 8:00 p.m., 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. Such exception shall not apply to noise or sound prohibited under section 46-130.
- (11) Vessels operating upon any watercourse, lake, river, or swamp. Such exception shall not apply to noise or sound generated by vessels impacting abutting land areas, unless located at or on a properly zoned marina vessel repair shop or manufacturing facility, or to noise or sound prohibited under section 46-130.
- (12) 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.
- (13) Impulsive sounds which are emanating in a manner consistent with the provisions of this article.
- (14) 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 county.
- (15) Activities on or in county 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.
- (16) Sound or noise emanating from any school facility between the hours of 7:00 a.m. and 5:00 p.m.

- (17) Sound or noise emanating from county permitted concerts, street fairs, festivals, or other public celebrations produced, sponsored, or approved by the county and other similar county events held between the hours of 7:00 a.m. and 11:00 p.m. and in accordance with an associated special event permit.
- (18) Construction activity performed within the hours permitted by section 46-33, provided that all equipment is operated in accordance with manufacturer's specifications and equipped with all noise-reducing equipment in proper condition.
- (19) 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 necessary business equipment shall not include equipment that broadcasts sound or noise from a business conducting entertainment activities.
- (20) 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 county.
- (21) The operation of tow trucks while assisting motorists or towing disabled vehicles.
- (22) Air blasts as a result of mining activity as regulated by the Florida State Fire Marshal.
- (23) Church or clock carillons, bells, or chimes during daytime hours.
- (24) Law enforcement activities, including training.
- (25) Launches approved by the National Aeronautics and Space Administration, the United States Space Force, the Federal Aviation Administration, or other appropriate federal agency having jurisdiction.
- (26) Any other sound authorized by county permit or county contract, but only to the extent allowed by such permit or contract.

Section 46-130. – 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 county 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) Operating any motor vehicle or vessel so out of repair, or so loaded or in such manner as to create loud, grating, grinding, rattling, so as to create a noise disturbance.
- (9) 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 create a noise disturbance.
- (10) No amplifier, loudspeaker, or other instrument or device in, upon, or attached to a motor vehicle shall be operated or permitted to be operated for advertising purposes or to attract the attention of the public. Ice cream trucks shall be specifically exempt from this prohibition.
- (11) A noise disturbance.
- (12) Any other violation of this article.

Section 46-131. - 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) 65 dBA or 70 dBC if the generating land is a commercial or institutional use during daytime hours.
 - (4) 55 dBA or 60 dBC if the generating land is a commercial or institutional use during nighttime hours.
 - (5) 75 dBA or 80 dBC if the generating land is an industrial use during daytime hours.
 - (6) 65 dBA or 70 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 pure tone, the maximum sound level limits set forth in subsection (a) shall be reduced by 5 dBA or 5 dBC. For any impulsive sound, the maximum sound level limits set forth in subsection (a) shall be increased by 5 dBA or 5 dBC during daytime hours. Impulsive sound is not permitted during the hours of 10:00 p.m. to 7:00 a.m.
- (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 or otherwise experienced in sound level measurement and the operation of sound level meters.

- (4) Sound level measurements shall be made no closer to the sound source than the real property boundary of the property from which the sound is generated. 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.

Section 46-132. - 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) Violations may be 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.

Section 46-133. – 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 8:00 p.m. Monday through Saturday or at any time on 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.

Section 46-134. – Warnings issued.

- (a) When an enforcement officer determines that there is a violation of this article, the enforcement officer shall issue a warning to the person or persons responsible for the noise. The warning shall advise the person or persons of the violation, and of the possible penalty if they fail to eliminate or reduce the noise to within 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.
- (b) 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, but shall not exceed five minutes.
- (c) If the noise is not eliminated or reduced to allowable limits after the warning was given, or if the person or persons so warned comply with the warning but violate this article again after the first warning, the person or persons so warned and not complying shall be subject to the penalties and legal remedies set forth in this article.

Section 46-135. – Penalty; code enforcement remedies and powers; special magistrate proceedings; noise disturbances; hearings and orders.

- (a) It is prohibited and unlawful to violate any provision of this article. The enforcement officers shall enforce the provisions of this article and may use any and all lawful powers, authorities, process, and procedures in taking actions to implement and enforce the provisions of this article.
- (b) Any person who violates any provision of this article shall be punished as provided in section 1-7.
- (c) Violations of this article may result in the issuance of a notice of violation and the initiation of code enforcement proceedings as provided in chapter 2 of this Code and chapter 162, Florida Statutes. In accordance with the provisions of section 2-173, the county may bring cases before the code enforcement special magistrate alleging that a violation of this article is occurring or has occurred on a parcel of property. It shall not be a lawful defense to a code enforcement proceeding brought pursuant to this article to assert that some person other than the property owner caused the violation. No notice of violation shall be issued against an absentee owner unless at least one of the following applies:

- (1) The absentee owner was notified of at least one warning issued for a violation of this article within the previous 12-month period. Notice of any previous warnings pursuant to this subsection shall be affected by registered or certified mail.
- (2) The violation is a repeat violation.

All provisions of section 2-174 shall apply to special magistrate proceedings relating to violations of this article; provided, however, that any order of the special magistrate finding a violation of this article to have occurred shall include a provision that the property shall not be deemed in compliance until it has been free of any noise violations for a period of 30 days.

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

Section 3. Sections 46-136 to 46-160 Reserved. Sections 46-136 through 46-160 of the Code of Ordinances of Brevard County, Florida, are hereby reserved.

Section 4. Repeal and Replacement of Chapter 62, Article VI, Division 6, Subdivision III, Section 62-2271, County Code. The provisions of section 62-2271 of the Code of Ordinances of Brevard County, Florida are repealed in their entirety and replaced with the following:

Section 62-2271. - Noise.

No person shall produce, cause to be produced, or allow to be produced, by any means, any sound within private or public property, including a right-of-way, which sound exceeds the applicable sound level limits set forth in chapter 46, article IV of this Code in violation of such article, constitutes a noise disturbance in violation of such article, or is prohibited under section 46-130.

Section 5. Conflicts. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 6. 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 7. Inclusion in Code. It is the intention of the Board of County Commissioners that the provisions of this ordinance shall be made a part of the Brevard County Code of Ordinances, and that the sections of this ordinance may be renumbered to accomplish such intention.

Section 8. Effective Date. This ordinance shall take effect immediately upon its adoption.

DONE, ORDERED, AND ADOPTED by the Board of County Commissioners of Brevard County, Florida, in regular session, this 22nd day of August, 2023.

Attest:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

BY: _____
Rachel Sadoff, Clerk

BY: _____
Rita Pritchett, Chair
(as approved by the Board on 8/22/2023)

(SEAL)