

EXHIBIT B—Ordinance No. 35-25
Code of Ordinances [Chapter 99 Added in its Entirety]

Chapter 99. NOISE CONTROL

Sec. 99.01. PURPOSE AND INTENT.

This Chapter shall apply to the control of all sound and vibration originating within the limits of the City. It is the intent of the City to protect public health, safety, and welfare by establishing regulations for the appropriate level of noise output. It shall be unlawful for any person or business to produce any noise which disturbs, injures, or endangers the comfort, repose, health, or safety of others within the limits of the City.

Sec. 99.02. DEFINITIONS.

The following words, terms, and phrases, when used in this Chapter, 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 Chapter that are not defined in this Section shall be obtained from publications of acoustical terminology issued by the American National Standards Institute (ANSI) or their successor bodies.

A-weighted sound level. The sound pressure level, in decibels, measured with a sound level meter using the A-weighting network, as specified in ANSI/ASA Standard S1.4-2014/Part 1, or the latest approved revision thereof. The level so read is designated dB(A) or dBA.

Active hours. 7:00 a.m. to 10:00 p.m. every day of the week in all areas of the City, except within the Entertainment District, where active hours are extended until 1:00 a.m. Saturday and Sunday.

Aircraft. Any self-propelled motor vehicle or contrivance now known or hereafter invented, used or designed for navigation of or flight in the air, including but not limited to powered paragliders.

Ambient sound. The all-encompassing noise associated with a given environment at a specified time, usually a composite of sound from many sources in many directions, near and far, with no particular sound dominant.

Amplification device. Any instrument, machine, or system that, by electronic means, augments sound by increasing the sound level or volume.

Amplified sound. Any sound or noise, including the human voice, augmented by any electronic means that increases the sound level or volume.

ANSI. The American National Standards Institute or its successor body or bodies.

Commercial property. Any property or portion thereof that is being lawfully used for commercial purposes. For the purposes of this chapter, properties with a mix of commercial and residential uses are considered commercial.

Construction. Any site preparation, assembly, erection, substantial repair, alteration, improvement, or similar action, but excluding demolition, on real property, whether publicly or privately owned, and whether above ground or below ground.

C-weighted sound level. The sound pressure level, in decibels, measured with a sound level meter using the C-weighting network, as specified in ANSI/ASA Standard S1.4-2014/Part 1, or the latest approved revision thereof. The level so read is designated dB(C) or dBC.

Decibel (dB). A unit for measuring the volume of a sound, equal to 20 times the logarithm to the base 10 of the ratio of the measured sound pressure to the reference pressure, which is 20 micro-pascals.

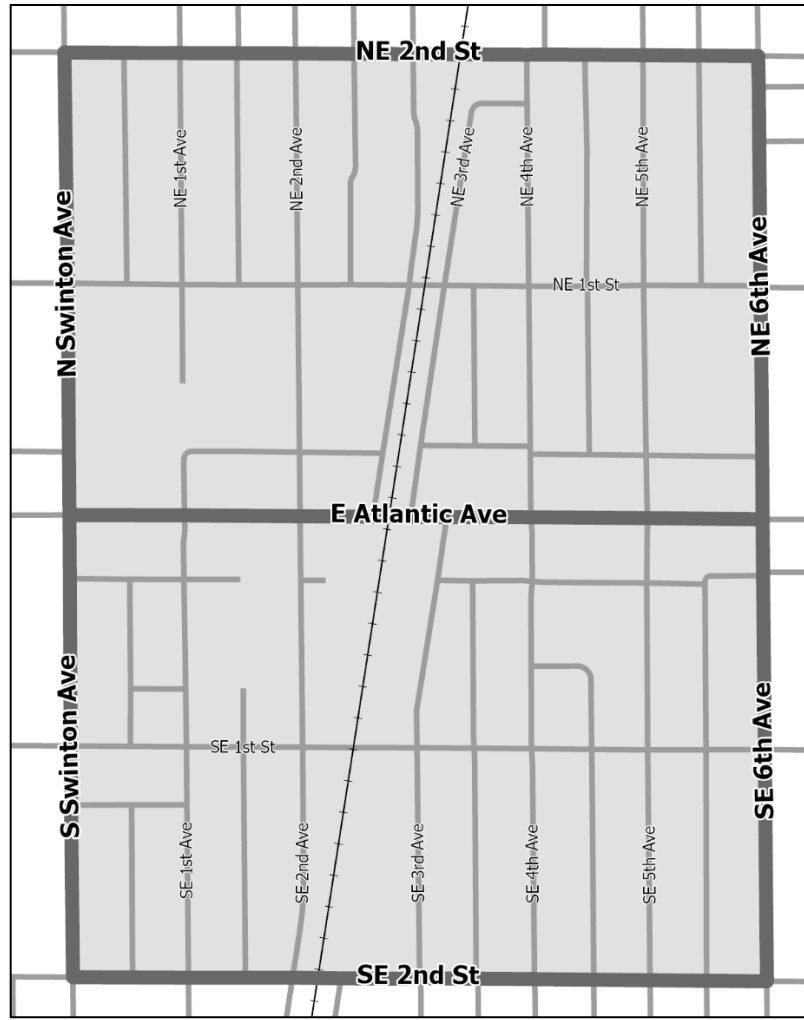
Demolition. Any dismantling, intentional destruction, or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

Emergency. Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage that demands immediate action.

Emergency work. Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

Enforcement Officer. Any designated employee or agent of the City of Delray Beach whose duty it is to enforce codes and ordinances enacted by the City, and who has received appropriate training as determined by the City of Delray Beach.

Entertainment District. The portion of the City bounded by NE 2nd Street on the north, SE 2nd Street on the south, Northbound Federal Highway/6th Avenue on the east, and Swinton Avenue on the west, as shown in the shaded area in the map below.



Equivalent A-weighted sound level (LAeq). The constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying A-weighted sound. For the purposes of this Chapter, a time period of thirty (30) seconds shall be used, unless otherwise specified.

Equivalent C-weighted sound level (LCeq). The constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying C-weighted sound. For the purposes of this Chapter, a time period of thirty (30) seconds shall be used, unless otherwise specified.

Impulsive sound. Sound of short duration with a rapid onset and rapid decay in which the total time from the initial onset of the sound wave to the peak pressure level of the wave of the time of the first return of the sound wave to the ambient sound level is less than one second. Examples of impulsive sounds and sources include explosions, drop forge hammers, discharge of firearms, discharge of nail guns, and pile drivers.

Industrial property. Any property or portion thereof that is being lawfully used for industrial purposes. For the purposes of this chapter, properties with a mix of industrial and commercial uses are considered industrial.

Maximum A-weighted sound level (LAFmax): - The maximum A-weighted sound level measured during a specific measurement period using the fast time constant on a sound level meter. The LAFmax sound level is expressed in dBA.

Maximum C-weighted sound level (LAFmax): - The maximum C-weighted sound level measured during a specific measurement period using the fast time constant on a sound level meter. The LCFmax sound level is expressed in dBC.

Noise. A type of sound that 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. Any sound or vibration or combination of sounds or vibrations that: (1) may disturb, annoy, or be harmful or injurious to the health or welfare of a reasonable person of ordinary sensibilities; or (2) 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 their daily living; or (3) exceeds the maximum allowable limits set forth in this Chapter.

Plainly Audible. Any sound that is unambiguous, verifiable, and discernible above ambient noise levels by a person using their unaided hearing faculties or that can be clearly heard by a person using his or her normal hearing faculties, at a distance 100 feet or more from the property line or right-of-way line to the source of the noise.

Premises. Any real property or parcel of land, including the buildings, structures or other improvements thereon.

Quiet hours. 10:01 p.m. to 6:59 a.m. every day in all areas of the City, except within the Entertainment District, where quiet hours are Monday through Friday from 12:01 a.m. to 6:59 a.m. and Saturday and Sunday from 1:01 am to 6:59 a.m.

Residential property. For purposes of this Chapter only, any property that is lawfully used for housing.

Sound. An oscillation of pressure, particle displacement, particle velocity, or other physical parameters, in air that causes compression and rarefaction as a wave pattern. The description of sound may include relevant characteristics of that sound, including duration, intensity (level), and frequency.

Sound frequency. The frequency or pitch of a sound wave, that is normally audible to people, with the unit of hertz (Hz) that is equivalent to sound cycles per second. Audible frequencies range roughly from 15 Hz to 20,000 Hz, or 20 kHz.

Sound level. The weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A or C as specified in American National Standards Institute specifications for sound level meters, ANSI/ASA Standard S1.4-2014/Part 1, or the latest approved revision thereof.

Sound level meter. An instrument comprising a microphone, amplifier, frequency-weighting networks, logging and averaging circuitry, a display screen, and digital output capability that is used for the measurement of sound levels in a specified manner. Sound level meters shall meet or exceed the requirements for Type II sound level meters described in ANSI/ASA Standard S1.4-2014/Part 1, or the latest approved revision thereof.

Sound production or reproduction device. A device intended primarily for the production or reproduction of sound, including, but not limited to, any musical instrument, radio receiver, television receiver, tape recorder, phonograph, digital sound storage device, or sound amplifying system.

Unamplified sound. Sound that is not amplified by electronic means.

Violator. A person or entity determined or cited by an enforcement officer as being in violation of the provisions of this Chapter.

Windscreen. A protective cover for the microphone of a sound level meter that reduces wind noise by minimizing low-frequency noise caused by air movement across the microphone which would otherwise lead to inaccurate readings.

Sec. 99.03. EXEMPT ACTIVITIES.

This Chapter shall not apply to the following:

- (A) Sounds created by police, fire, and other emergency response vehicles. The sound or noise of safety signals, warning devices, fire alarms, burglar alarms, civil defense alarms, 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.
- (B) 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.
- (C) The unamplified human voice, except for those activities prohibited by Section 99.04, which relates to unreasonable actions and activities.

- (D) 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.
- (E) Special events approved by the City, 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 pursuant to Section 99.07.
- (F) 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 or City ordinance.
- (G) Landscape maintenance equipment within the hours of 8:00 a.m. and 5:00 p.m. on weekdays, and between 8:00 a.m. and 4:00 p.m. on Saturdays and Sundays, provided that all equipment is reasonably operated in accordance with the manufacturer's specifications and is equipped with all noise-reducing equipment in proper condition.
- (H) Motor vehicles operating on a public right-of-way in compliance with F.S. Ch. 316 and § 403.415, as amended. Such exception shall not apply to noise or sound prohibited under Section 99.04.
- (I) Vessels operating upon any waterway. 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 99.04.
- (J) Any residential unit with air-conditioning equipment that is 5 tons or less or pool pump equipment that is 3 horsepower or less, when in reasonable mechanical condition, operating with the standard sound and vibration control systems typically provided by the manufacturer, at a sound level not to exceed 60 dBA or 65 dBC when measured over a minimum of 30 seconds averaging time at or beyond the property line of the source property.
- (K) Sport shooting ranges in compliance with F.S. §§ 790.33 and 823.16, as amended, and operating in a manner that is preempted from regulation by the City.
- (L) 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.
- (M) Sound or noise emanating from any school facility between the hours of 7:00 a.m. and 6:00 p.m.
- (N) 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 events held between the hours of 7:00 a.m. and 11:00 p.m. and in accordance with an associated special event permit.
- (O) Construction activity performed within the hours of 7:00 a.m. and 6:00 p.m. on weekdays, and between 8:00 a.m. and 4:00 p.m. on Saturdays, the use of any temporary pumps or machinery

required to be operated twenty-four (24) hours a day in conjunction with construction work, or where a temporary permit has been issued pursuant to Section 99.07, provided that all equipment is operated in accordance with manufacturer's specifications and equipped with all noise-reducing equipment in proper condition.

- (P) Noises resulting from Emergency Work, including but not limited to the use of generators or other equipment by communications and public utility companies in connection with a commercial power outage and/or restoration of service operations and the use of emergency generators due to loss of power other than non-payment of utility services. The testing of emergency generators shall not occur before 7:00 a.m. or after 7:00 p.m. and shall not occur more than once in each week.
- (Q) 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.
- (R) The collection of garbage, recyclables, or yard waste between the hours of 6:00 a.m. and 7:00 p.m. or as set forth in a solid waste franchise agreement with the City.
- (S) The operation of tow trucks while assisting motorists or towing disabled vehicles.
- (T) Church or clock carillons, bells, or chimes during Active hours.
- (U) Law enforcement activities, including training.
- (V) Any other sound authorized by City permit or City contract, but only to the extent allowed by such permit or contract.

Sec. 99.04. PROHIBITED ACTIVITIES.

The following actions and activities are prohibited and unlawful:

- (A) Peddling, hawking, vending, or barking by shouting or raised voice within the City limits, including, but not limited to, shouting, crying out by peddlers, hawkers, or vendors along or on a roadway.
- (B) Loading and unloading boxes, crates, containers, building materials, garbage cans, or similar objects during Quiet Hours to create a noise disturbance. Motor vehicle or vessel repairs, rebuilding, modifying, and testing in such a manner as to cause a noise disturbance.
- (C) 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.
- (D) The use of any siren upon any vehicle other than police, fire, ambulance, or other emergency vehicles.

- (E) 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.
- (F) 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.
- (G) 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.
- (H) 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 Quiet Hours, so as to create a noise disturbance.
- (I) Using an amplifier, loudspeaker, or other instrument or device in, upon, or attached to a motor vehicle for advertising purposes or to attract the attention of the public. Ice cream trucks shall be specifically exempt from this prohibition.
- (J) Allowing any animal to cause frequent, habitual, or continued noise for a period of 10 minutes or longer that is plainly audible as defined herein, at or beyond the property line of the receiving property.
- (K) A noise disturbance.
- (L) Any other violation of this Chapter.

Sec. 99.05. MAXIMUM PERMISSIBLE NOISE LEVELS ESTABLISHED; NOISE VIOLATION OBTAINED BY 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 the limits in Table 99, below. If the generating property is mixed use, the sound limit is the lower permitted decibel levels of the uses. Adjoining properties with different uses shall both comply with the more restrictive maximum permissible noise level limit.

<u>Table 99.05 A</u>		
<u>Maximum Permissible Noise Level Limits</u>		
<u>Sound Generating Uses</u>	<u>Active Hours Max. Decibels</u>	<u>Quiet Hours Max Decibels</u>
<u>Residential</u>	<u>60 dBA or 65 dBC</u>	<u>55 dBA or 60 dBC</u>
<u>Commercial</u>	<u>65 dBA or 70 dBC</u>	<u>55 dBA or 60 dBC</u>

<u>All uses within the Entertainment District</u>	<u>70 dBA or 80 dBC</u>	<u>65 dBA or 75 dBC</u>
<u>Community Facilities</u>	<u>65 dBA or 70 dBC</u>	<u>55 dBA or 60 dBC</u>
<u>Industrial</u>	<u>75 dBA or 80 dBC</u>	<u>65 dBA or 70 dBC</u>

(B) Correction for character of sound. For any source of sound which emits a continuous 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 Active hours. Impulsive sound is not permitted during Quiet Hours.

(C) Correction of ambient noise. Corrections of ambient noise sound should be as follows:

- (1) Measure the LAeq or LCEq of the total noise level for a minimum of 30 seconds while the source is active.
- (2) Turn off the source and measure the LAeq or LCEq of the ambient noise for a minimum of 30 seconds.
- (3) If the difference between the total noise level and the ambient noise level is less than 3 dB, the correction cannot be accurately determined.
- (4) If the difference between the total noise level and the ambient noise level is greater than 30 dB, there is no correction to the source sound level.
- (5) If the difference between the total noise level and the ambient noise level is between 3 dB and 10 dB, correct the total noise level as follows:

<u>Table 99.05 B</u>	
<u>Noise Level Corrections</u>	
<u>Difference between Total Noise and Background Noise (dB)</u>	<u>Correction to Subtract from Total Noise (dB)</u>
<u>3</u>	<u>3.0</u>
<u>4</u>	<u>2.2</u>
<u>5</u>	<u>1.7</u>
<u>6</u>	<u>1.3</u>
<u>7</u>	<u>1.0</u>
<u>8</u>	<u>0.8</u>
<u>9</u>	<u>0.6</u>
<u>10</u>	<u>0.4</u>

(D) Methods of measurements.

- (1) Equivalent continuous sound level measurements shall be made with a sound level meter using the A-weighting or C-weighting network, for comparison with the maximum permissible A-weighted and C-weighted noise levels described in Table 99.

- (2) Sound level meters shall be serviced, factory-calibrated within the previous year, and operated as recommended by the manufacturer. Sound level meters with extension cable shall be field-calibrated prior to conducting sound level measurements and checked for calibration drift at the completion of the sound level measurements, using a calibrator that has been factory-calibrated within the previous year. Adjust the sound readings if the calibration drift is greater than 0.1 dB. If the calibration drift is 1.0 dB or greater, the resulting sound levels are not to be used.
- (3) Persons using the sound level meter shall be trained or otherwise experienced in sound level measurements and the operation of sound level meters.
- (4) Sound levels shall be measured on the property boundary from which the sound is generated.
- (5) Sound levels shall be averaged over a period of at least 30 seconds.
- (6) During sound level measurements, the microphone shall be positioned atop a tripod and attached to the sound level meter by an extension cord. The operator should stand a minimum of 10 feet from the microphone. The microphone shall be positioned between 4 feet and 6 feet above the ground or floor surface and, whenever possible, a minimum of 20 feet from any reflecting surfaces that could artificially amplify the sound, unless the location affected by the noise, such as a second-floor window, requires deviating from these requirements. A minimum of a 3.5-inch diameter windscreen shall be used at all times. Windspeed shall be measured when the measurements are taken. If windspeed exceeds twelve (12) miles per hour, the results shall not be used.
- (7) Noise that is impulsive shall be measured using the instantaneous maximum sound level setting on the sound level meter with a Fast time constant (LFmax) for comparison with the maximum permissible noise levels described in Table 99. Any Impulsive Sound with LAFmax or LCFmax sound levels that exceed the sound level limits described in Table 99 more than two times over a period of one minute shall be deemed to be a violation of the maximum permissible noise levels in Table 99.
- (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 enforcement officer shall instead proceed under the Section 99.06, below, of this Chapter in order to determine whether a noise disturbance is occurring.

SEC 99.06. NOISE DISTURBANCE PROHIBITED; NOISE VIOLATION BASED ON PLAINLY AUDIBLE STANDARD.

- (A) A sound may be determined to be in violation of the sound level limits described in this Chapter if found by an enforcement officer using their normal hearing faculties to be plainly audible inside a fully enclosed residential structure with windows and doors closed.

- (B) A sound may be determined to be in violation of the sound level limits described in this Chapter if found by an enforcement officer using their normal hearing faculties to be plainly audible outdoors, but only if a sound level meter is not available, is not properly calibrated, or if the wind speed is consistently in excess of twelve (12) miles per hour, in which case the sound level meter shall not be used. The wind speed meter must be factory-calibrated within the previous year. If a violation is found, an enforcement officer may only provide a warning to the alleged violator.

Sec. 99.07. TEMPORARY PERMITS.

- (A) Requirements and Procedures. The City Manager or his or her designee is authorized to issue a temporary permit to allow noise when produced by a temporary use or activity as provided in this Section. The City Manager may prescribe any reasonable conditions necessary to minimize any adverse effect upon the community. A permit granted under this Section shall contain all conditions upon which the permit has been granted, including the decibel limit and the period of time for which the permit has been granted. Such relief may be granted in the following situations:

- (1) Special Events. When an applicant has an approved Special Event permit, a temporary permit to allow noise may be granted for the event.

- (2) Construction. When construction activities pursuant to a valid building permit cannot be carried out in a manner which would comply with Section 99.03, notwithstanding that all equipment is operated in accordance with manufacturer's specifications, is in good repair and utilizes all noise reduction methods as specified by the manufacturer.

- (a) The City Manager may authorize any necessary construction activities to occur earlier and/or later than normally allowed based upon a finding that:

1. There are no reasonable alternatives;
2. There are no prior code violation adjudications or fines and no pending construction noise violation cases against the property owner, contractor, or the construction site; and
3. There is a significant community need, public purpose or benefit.

- (b) The work authorized by the City Manager may be conditioned upon reasonable notice to surrounding property owners and tenants by the applicant. Permits issued pursuant to such authorization shall not exceed seven (7) consecutive days.

- (c) Notwithstanding the provisions (2)(a) and (b), temporary permits shall be subject to authorization by the Chief Building Official, or designee, under emergency circumstances or when the Chief Building Official, or designee, determines that for reasons of technical necessity work earlier or later than the time frames normally allowed or on any day (including Sundays or national holidays) is required. The work

authorized by the building official pursuant to this subsection shall be conditioned upon reasonable notice to surrounding property owners and tenants.

- (B) *Violation of Temporary Permit.* Failure to comply with any condition of a temporary permit issued pursuant to this Section shall constitute a violation and shall result in enforcement procedures and penalties as set forth in Section 99.09.
- (C) *Revocation of Temporary Permits.* Any temporary permit may be immediately revoked if the City Manager finds that an emergency condition exists involving serious danger to the public health, safety, or welfare; if the permit holder failed to disclose or misrepresented material information in the permit application or in the permit application process; or that there was a failure to comply with any condition of a particular temporary permit.
- (D) The issuance of a temporary permit is a privilege and does not constitute a right or expectation that said permit will remain in effect. Any permits issued pursuant to this section shall not constitute or be deemed precedent for the granting of any future permits.
- (E) *Appeals.* Appeals of the decision of the City Manager or his/her designee shall be made to the City Commission by submitting the appeal in writing to the City Clerk within ten (10) days of the denial. The decision of the City Manager is final.

Sec. 99.08. WARNINGS ISSUED.

- (A) When an enforcement officer determines that there is a violation of this Chapter, 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 violate this Chapter again after the first warning, the person or persons shall be subject to the penalties and legal remedies set forth in this Chapter.

Sec. 99.09. NOTICE OF VIOLATION/PENALTY.

- (A) It is prohibited and unlawful to violate any provision of this Chapter. The City's enforcement officers shall enforce the provisions of this Chapter and may use any and all lawful powers, authorities, process, and procedures in taking actions to implement and enforce the provisions herein.
- (B) Any person who violates any provision of this Chapter shall be punished as provided in Chapter 37 of the City's Code of Ordinances. Violations of this Chapter 99 may result in the issuance of a notice

- of violation and the initiation of code enforcement proceedings as provided in Chapter 37 of this Code and F.S. Ch. 162. In accordance with the provisions of Chapter 37, the City may bring cases before the code board or code enforcement special magistrate alleging that a violation of this Chapter is occurring or has occurred on a parcel of property.
- (1) Each violation shall constitute a separate instance for which a separate fine may be imposed. A person may receive a separate notice of violation once every hour if a violation has occurred at any time within that period. A violation shall be deemed to have occurred on the date that the noise incident occurred. It shall not be a lawful defense to a code enforcement proceeding brought pursuant to this Chapter to assert that some person other than the property owner caused the violation.
 - (2) No notice of violation shall be issued against an absentee owner unless at least one of the following applies:
 - (a) The absentee owner was notified of at least two warnings issued by any enforcement officer for a violation of this article within the previous 12-month period. Notice of any previous warnings or violations pursuant to this subsection shall be affected in writing by registered or certified mail.
 - (b) The violation is a repeat violation.
 - (3) All provisions of Chapter 37 shall apply to the code enforcement board or special magistrate proceedings relating to violations of this Chapter; provided, however, that any order finding a violation of this Chapter has 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.
- (C) The fact that the noise or music emanating from the property exceeds the dB(A) sound level referenced in Section 99.05 above constitutes prima facie evidence the violation has occurred. Any violation of this subsection is punishable as follows:
- (1) For a first offense, a fine of \$250.00;
 - (2) For a second offense, a fine of \$500.00
 - (3) Violations may also be punished with a fine in an amount of up to \$1,000.00 per diem for a first offense and a fine in an amount of up to \$5,000.00 per diem for a repeat violator to be assessed pursuant to Chapter 37. If a violation is found to be irreparable or irreversible in nature, a fine may be assessed in an amount of up to \$15,000.00 for each violation in accordance with Chapter 37 of the City's Code of Ordinances.
 - (4) Noise violations may be used as evidence in a public hearing to consider revocation of Conditional Use approvals.
- (D) Violations shall be enforced against the property owner and/or violator under the provisions of Chapter 37 of the City Code and any other remedies as provided by law, including, but not limited to,

revocation of certificate of use and/or business tax receipt, and actions for injunctive relief in the circuit court.

(E) This Chapter shall be enforced using procedures set forth herein, Chapter 37 of the City's Code of Ordinances, or by any other means available to the City.