

**ORDINANCE NO. 25-\_\_\_\_\_**

**AN ORDINANCE RELATING TO NOISE CONTROL TO BE KNOWN AND CITED AS THE POLK COUNTY NOISE CONTROL ORDINANCE; MAKING FINDINGS; PROVIDING AUTHORITY; PROVIDING SCOPE; PROVIDING DEFINITIONS; PROHIBITING NOISE DISTURBANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR SPECIFIC PROHIBITIONS; PROVIDING FOR LIBERAL, NON-CONFLICTING CONSTRUCTION; PROVIDING FOR EXEMPTIONS; PROVIDING FOR SEPARATE VIOLATIONS; PROVIDING FOR RESOLUTIONS; REPEALING ORDINANCE 14-030; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

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

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

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

**WHEREAS**, such disturbing noise problems may not be amenable to practical measurement by decibel measuring apparatus.

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

**SECTION 1: TITLE.**

This Ordinance shall be known and may be cited as the Polk County Noise Control Ordinance.

**SECTION 2: AUTHORITY**

This Ordinance is enacted under the Home Rule Power of Polk County, specifically Section 125.01, Florida Statutes, and pursuant to Article II, Section 7, Florida Constitution, which provides that adequate provision shall be made by law for the abatement of excessive and unnecessary noise.

**SECTION 3: APPLICABILITY**

This Ordinance shall be effective throughout the unincorporated areas of Polk

County, Florida.

#### **SECTION 4: EXEMPTIONS.**

The provisions of this Ordinance, except for those specific prohibitions set forth in Section 8 of this Ordinance, shall not apply to the following sounds:

- 1) The unamplified human voice;
- 2) Railway locomotives or cars;
- 3) Household or farming tools, appliances, and equipment meeting manufacturer's specifications as to sound, if applicable;
- 4) Aircraft and airport activity conducted in accordance with federal laws and regulations;
- 5) Maintenance of public service facilities;
- 6) Law enforcement activities, including training;
- 7) Licensed game hunting activities;
- 8) Emergency signals during emergencies;
- 9) Emergency testing;
- 10) Refuse collection and mosquito fogging;
- 11) Operation of any regulated or publicly owned utility;
- 12) Construction activities exempt from, or for which Polk County has issued a development permit; provided such activity occurs between 6:00 a.m. and 9:00 p.m.;
- 13) Organized athletic contests provided such activity occurs between 6:00 a.m. and 9:00 p.m.;
- 14) Sounds relating to and originating within any nonresidential land use districts under the Polk County Comprehensive Plan and Land Development Code (except for those sounds specifically prohibited in section 8 of this Ordinance);
- 15) Sounds relating to and originating from legal, pre-existing, nonconforming, commercial and industrial activities (except for those sounds specifically prohibited in Section 8 of this Ordinance);
- 16) Phosphate mining activity;
- 17) Emergency devices and vehicles used for the purpose of alerting people of an emergency, or the emission of sound in performance of emergency work;
- 18) Lawful public gatherings provided such activity occurs between 6:00 a.m. and 9:00 p.m. (except for those sounds specifically prohibited in Section 8 of this Ordinance);
- 19) Reasonable operation of equipment associated with the following activities between 6:00 a.m. and 9:00 p.m.: Lawn care, soil cultivation, maintenance of trees, hedges, and gardens; the use of lawnmowers, saws, and tractors; tree trimming; and limb clipping; and
- 20) Recreation and amusement (general or intensive) activities approved by the county through a Level 3 or Level 4 conditional use process under the Land Development Code.

#### **SECTION 5: DEFINITIONS**

As used in this Ordinance, the following terms shall have the following meanings:

- 1) "Noise Disturbance" means any sound which is:
  - a. plainly audible at a distance of 50 feet from the source of the sound; or

- b. of such duration, volume, or intensity as to be detrimental to human or animal life, or property; or
  - c. of such duration, volume, or intensity as to unreasonably interfere with the comfortable enjoyment of life, property, or the conduct of business; or
  - d. of such duration, volume, or intensity as to alarm, disturb, or annoy reasonable people; or
  - e. unreasonably loud, raucous, jarring, disturbing, unseemly, or a nuisance.
- 2) "Amplified" means increased in volume or intensity by means of an electrical or mechanical device.
  - 3) "Motorized vehicle" means any transportation vehicle that is propelled, other than by human or animal power, on land. This includes, but is not limited to, motorcycles, ATVs, go-karts, automobiles, and trucks.
  - 4) "Plainly Audible" means any sound that can be clearly heard by a person with normal hearing at a distance of 50 feet from the source of the sound.
  - 5) "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on the water.

#### **SECTION 6: PROHIBITION OF NOISE DISTURBANCES**

No person or business may make, continue, permit, or cause to be made or continued, any noise disturbance as defined in this Ordinance. Factors that shall be considered in determining whether a Noise Disturbance in violation of this Ordinance has occurred shall consist of but may not necessarily be limited to, the following:

- 1) The duration, volume, or intensity of the noise;
- 2) The nature of the area and the land use district from which the sound emanates in relation to the area where it is perceived;
- 3) The time of day or night the noise occurs; and/or
- 4) Whether the noise is recurrent, intermittent, or constant.

#### **SECTION 7: ENFORCEMENT**

The County's code enforcement officers, the Polk County Sheriff's Office and any other person authorized to enforce county ordinances may enforce the provisions of this Ordinance. Any enforcement action or legal remedy available under controlling state law, including, but not limited to, prosecution as a misdemeanor with a fine not exceeding five hundred dollars (\$500.00) or by imprisonment for a term not exceeding sixty (60) days or by both fine and imprisonment, may be imposed as a penalty. When enforced by a code enforcement officer, the enforcement provisions and procedures contained in the Polk County Code Enforcement Special Magistrate Ordinance, as may be amended, are incorporated herein by reference and will apply. Nothing contained herein shall prevent the County from taking such other lawful action in law and equity as may be necessary to remedy any violation of any part of this Ordinance, including without limitations:

- 1) Pursuit of injunctive and/or declaratory relief in a court of competent jurisdiction; and
- 2) Utilizing any other action or enforcement method permitted by law.

## **SECTION 8: SPECIFIC PROHIBITION**

The following specified acts and circumstances are hereby declared to constitute a prohibited Noise Disturbance in violation of this Ordinance; provided however, such enumeration is not and shall not be deemed to be exclusive; provided further that all other acts and circumstances meeting the definition of Noise Disturbance are likewise declared to be in violation of this Ordinance.

- 1) *Radios, Televisions, Musical Instruments, and Similar Devices, and Amplified Human Voice.* Playing or permitting the playing of any radio, television, audio system, musical instrument or similar device, or amplifying the human voice, sound or music, to such a volume as to be a Noise Disturbance.
- 2) *Barking Dogs.* Allowing a dog to bark, howl, or whine continuously or intermittently for a period of 10 minutes or more between the hours of 9:00 P.M. and 6:00 A.M. such that it creates a Noise Disturbance. Any person or entity warned or cited for a violation under this specific subsection shall be subject to the conditions, procedures, penalties, and exemptions found in the Polk County Animal Control and Animal Services Ordinance and its amendments. The Sheriff's Office may defer enforcement against the owner of the animal to Animal Control in accordance with the Polk County Animal Control and Animal Services Ordinance, and its amendments, if the law enforcement officer is unable to personally observe the Noise Disturbance being created by the dog.
- 3) *Motorized Vehicles.* Except for such projects and uses that have received a Level 3 or Level 4 conditional use approval from the county under the Land Development Code, it is a violation of this Ordinance to drive a motorized vehicle in a manner that causes the tires to screech or squeal repeatedly on public or private property such that it causes a Noise Disturbance; repeatedly accelerate and decelerate a motorized vehicle on public or private property such that it causes a Noise Disturbance; or repeatedly shift the gears of the motorized vehicle up and down on private or public property, such that it creates a Noise Disturbance;
- 4) *Vessels.* It is a violation of this Ordinance to operate or permit the operation of a vessel in a manner that creates a Noise Disturbance, including but not limited to:
  - a. Operating a vessel with an excessively loud exhaust system;
  - b. Playing music or using amplified sound equipment on a vessel at a volume that is plainly audible at a distance of 50 feet from the vessel;
  - c. Yelling, shouting, screaming, or other noise from a vessel in a manner that creates a Noise Disturbance.

## **SECTION 9: LIBERAL, NON-CONFLICTING CONSTRUCTION.**

The provisions of this Ordinance shall be liberally construed such that its purpose is effectively rendered in the interest of the health, safety, and welfare of the citizens and residents of Polk County.

## **SECTION 10: SEPARATE VIOLATIONS**

Each separate occurrence shall be a separate violation.

**SECTION 11: RESOLUTIONS**

The Board of County Commissioners may adopt such resolutions as are necessary to effectively administer this Ordinance.

**SECTION 12: REPEAL AND SEVERABILITY**

Polk County Ordinance No. 2014-030, as amended, is hereby repealed. If any provision of this Ordinance or if this Ordinance as applied is determined to be invalid or unconstitutional by a court of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

**SECTION 13: EFFECTIVE DATE**

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