



To: Ms. Lynn Gelin, City Solicitor
From: Robert Victorin, President, Board of Trustees, Beach Property Owners' Association (BPOA)
Subject: BPOA Comments: Proposed City Noise Ordinance - Noise Control in Delray Beach
Date: August 22, 2022
CC: City Commissioners – City of Delray Beach
Mr. Terrence Moore, City Manager

Executive Summary

The Beach Property Owners' Association (BPOA) appreciates this opportunity to present its comments to the City of Delray Beach and its advisors concerning the planned update of the City's current noise regulations. That the City has taken this step and adopted the goal of establishing "a comprehensive, enforceable and objective ordinance that will meet the city's needs for many years to come" is commendable and quite timely. And, because excessively loud sound is offensive in general, the BPOA recommends that the updated Noise Ordinance be applied city-wide, and not simply phased in initially for only the Entertainment District.

Noise complaints remain one of the top concerns of the BPOA membership. These complaints mostly concern: (i) motor vehicles (cars, trucks and motorcycles); (ii) powered lawn tools (leaf-blowers, trimmers, etc.); and (iii) late evening amplified noise from bars, restaurants and entertainment venues.

- **Motor Vehicle Noise:** BPOA recommends that the City direct the police department to immediately enforce recent updates to Florida's motor vehicle regulations. We refer to Sections 316.293 and 316.3045 of the Florida Statutes, both recently updated; these two sections regulate motor vehicle noise, sourced from engines, exhaust systems, and mechanical sound devices installed in motor vehicles. Enforcement would immediately mitigate the number one complaint of Barrier Island residents, that being "excruciating noise" produced by motor vehicles, mainly along AIA in the Beach Area, and along East Atlantic Avenue, principally late afternoons and evenings.
- **Powered Lawn Tools:** BPOA recommends that the City establish a maximum noise standard of 65 decibels (dBA) for powered lawn tools, on a City-wide basis. Operating lawn tools (blowers, trimmers, etc.), powered by internal combustion engines (ICEs), extremely disrupt the tranquility of residential neighborhoods. BPOA suggests that the

updated noise ordinance incorporate a 3-year phase-in program, whereby ICE-powered “lawn tools” would comply with the specified maximum noise standard (65 dBA), perhaps by being replaced with electric-powered tools.

- *Amplified Sound Sources*: BPOA endorses the city’s plan to set appropriate, quantitative and reasonable sound/noise standards for amplified sound and music throughout the City. With numerical decibel-level, frequency, duration and type-of-noise source regulations, it will be possible for producers-of-amplified sound to monitor and maintain compliance, and likewise, for City enforcement personnel to measure compliance. That is why the BPOA recommends that “stationary sources-of-amplified sound” be required to install, operate and maintain sound limiters and sound compliance monitoring devices. We recognize that differing standards may be appropriate for different districts of the City, and likewise for different types of sources and varying days and hours. To these specifics, we would generally defer to the advice of a qualified acoustical expert. Lastly, the BPOA recommends that the Noise Ordinance update include a numerical “night-time tranquility standard” in the range of 40 dBA – so as to reasonably assure night-time tranquility protection. This is vital because our City is a “Live, Work, Eat, Play and Sleep/Shop (LWEPS)” community.

Further details and elaboration of the recommendations set forth in this Executive Summary are given below. The BPOA looks forward to the opportunity to assist the City as it works toward finalizing and implementing the updated Noise Ordinance.

Introduction

The BPOA has been following the noise ordinance update process in several ways, including participation in the City’s Public Workshop on April 21, 2022, where we offered some comments and suggestions. Since then, we have also had brief dialogue with Mr. Brooks of Brooks Acoustics Corporation concerning motor vehicle noise, the recently completed sound walks, and the basics of sound regulation (e.g., amount, duration, types and sources of offensive sound/noise). The BPOA endorses the overriding objective announced by the City for this update – that being to establish “a comprehensive, enforceable and objective ordinance that will meet the city’s needs for many years to come.” Moreover, we agree that an updated “noise ordinance” should include “performance-based” noise standards – that quantitatively regulate sound levels, durations, peak values, and noise sources – measured by devices such as decibel meters. Of course, an updated noise ordinance also needs to include strong enforcement procedures.

Concerning areas of the City to be “first regulated”, the BPOA believes that *a phased approach is not advisable*, because sound that is offensive in the Entertainment District is also offensive in all Districts of the City. We think that noise standards should be broadly established for all districts that abut the Entertainment District and beyond.

Needs Overview:

Noise complaints remain among the top concerns brought to the attention of the BPOA by its members. On the Barrier Island, these complaints mostly concern: (i) motor vehicles (cars, trucks and motorcycles); (ii) powered lawn tools (leaf-blowers, trimmers, etc.); and (iii) late evening amplified noise from bars, restaurants and entertainment venues. Not unlike others throughout the City, residents of the Barrier Island are attracted to and enjoy the opportunity to live in a vibrant City with diverse land uses (i.e., combination of commercial, residential and entertainment zones that accommodate a “Live, Work, Eat, Play and Sleep/Shop [LWEPS]” environment); one where these mixed uses may compatibly co-exist. More detail is given below with respect to these three noise concerns (motor vehicles; powered lawn tools; and amplified sound).

Motor Vehicle Noise

On most any afternoon or evening along East Atlantic Avenue and North/South Ocean Avenue (A1A), and usually near an intersection with traffic lights, pedestrians, residents, and business patrons routinely experience offensive and even excruciatingly loud sounds from certain cars, trucks and motorcycles. In most cases, the “offender” is operating a motor vehicle with an exhaust system, engine, or fuel system intentionally modified from its original manufacture to create very loud noise. Also, in many cases, an “offender” is playing extremely loud music or other offensive and audible noise (sometimes vulgar) produced by a radio or other mechanical sound-producing device (e.g., “boom box”). Fortunately, Florida under its motor vehicle regulations has recently updated motor vehicle noise standards in two ways. First, Section 316.293 of the Florida State Uniform Traffic Control regulations sets numerical decibel-level (dBA) standards for the engines and exhaust systems of motorcycles, trucks (GVW >10,000 pounds), and all other vehicles (autos, etc.), including distinctions based upon posted speed limit. Secondly, Section 316.3045 of the Florida Statutes, effective July 1, 2022, sets audible sound (noise) standards for any radio or other mechanical sound-making device or instrument in any motor vehicle.

Besides the established sound level standards (decibel levels) for motor vehicle engines and exhaust systems (Section 316.293), noteworthy are two other provisions that make it illegal to: (i) modify the exhaust system of any motor vehicle in such a manner that the noise emitted exceeds the noise of the vehicle as originally manufactured; and (ii) operate any motor vehicle with any modification to its exhaust system as originally manufactured.

Based on our reading of both Sections 316.293 and 316.3045, the City clearly has the authority to direct its police department to enforce these rules. Specifically, under either or both statutes, law enforcement could issue citations for: (i) excessive sound levels as measured by a certified sound meter; (ii) deviations from original manufacture status (exhaust systems); and, (iii) excessive noise audible beyond 25 feet of any motor vehicle operating any sound-making device (e.g., radio, instrument or other). The audio citation would not require a sound meter, as it simply requires an officer to determine if the audio noise is excessive.

With motor vehicle (engine, exhaust, and music/boom-box-type) noise being a major complaint of the Barrier Island community, we respectfully request that the City immediately direct the police department to actively enforce these motor vehicle noise standards along Atlantic Avenue and AIA, principally during late afternoons and evenings.

Powered Lawn Tools

Leaf blowers, string trimmers, hedge trimmers, and chain saws powered by internal combustion engines (ICEs) produce excruciatingly loud sounds while operating – sounds (noise) that are extremely offensive to residents of residential neighborhoods on the Barrier Island (and no doubt City-wide). Although not widely enforced, workers that use these types of devices are subject to protective regulations (hearing protection) established by the U S Occupational Safety & Health Administration (OSHA) due to high decibel levels normally associated with these devices (e.g., range between 90 & 120 decibels [dBA levels]). Unfortunately, OSHA has not established similar standards that protect other receptors (e.g., residents).

Residents of Barrier Island neighborhoods are subjected to offensive noise from these types of ICE devices, often on a daily basis. Anyone that experiences this type of noise is acutely aware of the extreme disruption to the tranquility of the neighborhood when these devices are operated. Typically, these devices operate at decibel levels of 90 dBA and greater, posing a significant public health hazard, often requiring hearing protection.

As a relevant comparison, please note that the standards for motor vehicles (set by the above-referenced Florida statutes) limit decibel levels to a maximum of 80 dBA or less – and in those cases, for just brief exposures. Likewise, standards for urban settings where a decibel standard is set (protective of residential districts in daytime and evenings) typically falls in the range of 55-65 dBA.

For powered lawn tools, the BPOA recommends a maximum noise standard of 65 decibels (dBA), on a City-wide basis, for all residential districts. Comparable electrically powered lawn tools typically operate at decibel levels ranging between 60 and 65 dBA. At this level, offensive sound from ICE-powered lawn tools would be *reduced by two orders of magnitude*. We suggest that this recommendation take effect over a three-year phase-in period, not later than July 1, 2026. Phasing by zoning district, overlays, or geographic boundaries (e.g., North of Atlantic, South of Atlantic, etc., or by other means) may be appropriate. To be clear, we recommend that a specific noise standard of 65 dBA be set for all powered lawn tools, regardless of energy source.

In the interim (during the phased transition), the City might consider mandating specific days of the week or specific streets or distinct neighborhoods for such yard maintenance. One example would be to alternate nearby streets so one is done, for example, on Monday and Wednesday, while the other is done on Tuesday and Thursday, etc.

Amplified Sound Sources – Bars, Restaurants & Entertainment Venues

The BPOA strongly supports the city's plan to set appropriate, quantitative and reasonable sound/noise standards for amplified sound and music throughout the City. Typical sources include recorded music, live microphones, live and recorded entertainment, streaming services, live television, radio, disc jockey, loud parties, venue openings, and the like. Amplified music derived from audio systems including loudspeakers that convey audible sound (both indoor and outdoor) needs to be regulated with standards established City-wide (not just for bars, restaurants, and entertainment venues) for: peak level, duration, and time-of-day. The noise ordinance should also require compliance monitoring for "stationary sources-of-amplified sound" (i.e., businesses that operate speaker systems on a regular basis). Methods of noise compliance monitoring should include sound measurement, sound recording, and sound limiter devices. These, for example, are practices in effect in many cities throughout the US, including Miami. This approach is more preventative and pro-active, in contrast to reactive complaints and enforcement, whereby citizens would not have to call the police to come by and measure noise, and gather evidence, after-the-fact, to enforce the rules and to drive compliance. Instead, officers could simply compel a regulated business to produce the required noise data to either demonstrate compliance or to prove non-compliance. This way, the City would not be burdened by a potentially large number of noise complaints, from time to time.

While the BPOA would defer to the advice of a qualified acoustical expert, we suggest that quantitative numerical standards be established that vary according to location, duration, time of day, and proximity to residences. For example, we suggest that numerical sound/noise standards for daytime and early evening differ from late night and nighttime periods. Depending upon these types of factors, we anticipate that decibel standards would range between 35 and 80 dBA, circumstances and time of day dependent (e.g., proximity to residences and time of day would particularly guide the stringency of the numerical standards). Moreover, and based upon limited internet queries, we suggest that both: (i) the numeric sound standards and, (ii) the prescribed compliance monitoring technology fully capture and take into account the more offensive sounds that emanate from amplified music such as the "Bass, Sub-Bass, and Low-Mids" frequency ranges (i.e., the "boom-box" and low bass effects).

On a final note, the BPOA suggests that the new ordinance include a standard for "nighttime tranquility" (such as after 10:00 PM or 11:00 PM) to reasonably prevent sleep disruption/disturbance to persons living near regulated sound sources. Based on available information, a "night-time tranquility standard" in the range of 40 dBA would seem most appropriate. This is vital because our City is a "Live, Work, Eat, Play and Sleep/Shop (LWEPS)" community.

Thank you for the opportunity to present these comments. If you, the Commission, or the other addressees have questions concerning these comments, please contact the BPOA at: admin@bpoa-drb.com