

AGENDA
COMPREHENSIVE PLANNING AND ZONING BOARD REGULAR
MONTHLY MEETING
TUESDAY, MAY 20, 2014, 7:00 P.M.
CITY HALL, 2200 STATE ROAD A1A SOUTH
ST. AUGUSTINE BEACH, FLORIDA 32080

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. APPROVAL OF MINUTES OF TUESDAY, MARCH 18, 2014
REGULAR MONTHLY MEETING

V. PUBLIC COMMENT

VI. NEW BUSINESS

1. PROPOSED REVISION TO CITY'S NOISE
REGULATIONS PERTAINING TO OUTDOOR MUSIC

The Board shall review proposed revisions to the City's current noise regulations, per Sections 9.02.01-9.02.16 of the City's Land Development Regulations, pertaining to outdoor music, for the Board's recommendation to the City Commission as to whether or not the proposed revisions should be adopted by ordinance.

VII. OLD BUSINESS

VIII. BOARD COMMENT AND DISCUSSION

IX. ADJOURNMENT

For more information on any of the above agenda items, please call the City of St. Augustine Beach Building and Zoning Department at 471-8758. Persons requiring special assistance should call this number at least 24 hours in advance of the meeting date and time.

MINUTES OF THE REGULAR MONTHLY MEETING OF THE COMPREHENSIVE PLANNING AND ZONING BOARD of the City of St. Augustine Beach, Florida, held Tuesday, March 18, 2014, at 7:00 p.m. in the City Commission Meeting Room, City Hall, 2200 State Road A1A South, St. Augustine Beach, Florida, 32080.

I. CALL TO ORDER

Chairman Alfred Guido called the meeting to order at 7:00 p.m.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

BOARD MEMBERS PRESENT: Chairman Alfred Guido, Vice-Chairman Margaret England, David Bradfield, Steve Mitherz, Elise Sloan, Karen Zander, Senior Alternate Lennet Daigle.

BOARD MEMBERS ABSENT: Roberta Odom, Junior Alternate Jane West.

STAFF PRESENT: Gary Larson, Building Official; James Whitehouse, City Attorney; Max Royle, City Manager; Bonnie Miller, Recording Secretary.

IV. APPROVAL OF MINUTES OF TUESDAY, JANUARY 21, 2014 REGULAR MONTHLY MEETING

Ms. Sloan **MADE A MOTION TO APPROVE THE MINUTES OF THE REGULAR MONTHLY MEETING OF TUESDAY, JANUARY 21, 2014.**

The motion was seconded by Mr. Mitherz and passed 7-0 by unanimous voice-vote.

V. PUBLIC COMMENT AND DISCUSSION

Mr. Guido asked for public comment on any issue not on the agenda. There was none.

VI. NEW BUSINESS

1. AMENDMENT/MODIFICATION OF FINAL DEVELOPMENT ORDER FILE NO. 2006-02 FOR REPLAT OF TRACT C OF LAKE SIENNA SUBDIVISION, pertaining to the City Commission's approval, at its regular monthly meeting held on Monday, March 3, 2014, of a request for a replat of Tract C of Lake Sienna Subdivision, to reduce the numbers of lots platted on Tract C from four lots to two.

Mr. Larson said it's his opinion a final development order is not needed for the replat of these two lots on Tract C of Lake Sienna Subdivision. There will be no road construction,

as access to the lots will come off of Old Beach Road, and the sewer will tie-in to the existing lift station, per the agreement between Lake Sienna Homeowners' Association and the property owner, Mr. Jerry Smith. The only outstanding issue is the mitigation process Mr. Smith is currently going through with St. Johns River Water Management District for the two lots. If this is successful, the project will be a go, but if it fails, it dies.

Mr. Guido said there's a significant deviation between the original final development order granted for four lots on Tract C, which had a one-year expiration date in which all construction had to be completed, and the modified final development order for two lots, included in the Board's packet information, which has a three-year expiration date for completion of construction. He asked if the original final development order has any standing at all, since construction was not completed within one year from the date of the final development approval of the four lots which are now proposed to be reduced to two.

Mr. Whitehouse said from a legal perspective, it would be appropriate to consider the request for modification and the time period change, as what's proposed is a less intense development. He does, however, think a modification to the final development order is needed, to allow for the change in the expiration date for completion of construction.

Mr. Mitherz said he talked to Ms. Miller about this agenda item and also visited the site.

Mr. Guido asked for any other ex-parte communication disclosure. There was none. He asked if the applicant or a representative for the applicant was present.

Mr. Larson said no, Mr. Smith is from Atlanta, Georgia, and he has a critically ill wife, so he is unable to be here tonight. Aside from that, the proposed modification to the final development order, if it is needed, is coming from staff.

Mr. Guido said the basic question before the Board is the modification of the time period from one to three years, as all of the other provisions of the original final development order are still in place in the modified final development order. As Mr. Larson stated in his staff memo, the City was involved in a lawsuit over these lots, but the litigation against the City was dismissed, and the issues between Lake Sienna Homeowners' Association and the property owner were settled in mediation. The replat request has gone before the City Commission, which approved reducing the original four lots to two.

Mr. Bradfield asked what the nature of that lawsuit was.

Mr. Larson said basically, a lawsuit was filed against the City for initially not approving the original four lots proposed on Tract C. With the City's subsequent approval of the four lots, the litigation against the City was dismissed. They're not privy to what was resolved in mediation between the Homeowners' Association and Mr. Smith.

Ms. Zander asked for clarification on what exactly the Board is being asked to approve, since Mr. Larson has advised he doesn't think a final development order is needed to reduce the number of lots on this property from four to two.

Mr. Guido said what the Board is considering is the change in the time period. The original final development order for four lots was effective for a period of one year, by the end of which, all construction on the site was to be completed, while the modified final development order has an effective date of three years, by the end of which, all construction is to be completed. Everything else in the modified final development order seems to be identical to the conditions of the original final development order.

Mr. Whitehouse said it's his understanding, from the staff recommendation, that the only difference between the original final development order and the modified final development order is the reduction of the original four lots to two, along with the change in the time period for the effective date of the final development order. Staff has analyzed the other conditions and determined the proposed reduction of the original four lots to two lots meets the City's Land Development Regulations and Comprehensive Plan, which is also within the Board's purview to determine, based on whether there is any testimony to the contrary and discussion or knowledge as to whether there have been any substantial changes to the area since approval of the original final development order.

Mr. Bradfield asked if the reason for this being approved in the context of a modification to the final development order is because it would have to comply not only with the City's Land Development Regulations and Comprehensive Plan, but with the other conditions as stated in the extended, and modified, final development order.

Mr. Whitehouse said the reason the original final development order has to be modified is because it has expired. The four lots approved by the order were never developed, and they've now been reduced, per the replat approved by the City Commission, to two lots.

Mr. Bradfield MADE A MOTION TO APPROVE MODIFICATION OF FINAL DEVELOPMENT ORDER FILE NO. FD 2006-02 TO EXTEND THE EXPIRATION DATE FOR COMPLETION OF CONSTRUCTION FOR THREE YEARS FROM THE DATE OF APPROVAL OF THE FINAL DEVELOPMENT ORDER MODIFICATION, AND FOR A REPLAT OF TRACT C OF LAKE SIENNA SUBDIVISION, TO REDUCE THE NUMBER OF LOTS ON THE ORIGINAL PLAT FROM FOUR TO TWO, AS APPROVED BY THE CITY COMMISSION AT ITS REGULAR MONTHLY MEETING OF MARCH 3, 2014. The motion was seconded by Ms. Sloan and passed unanimously 7-0 by roll-call vote.

2. AMENDMENTS TO CAPITAL IMPROVEMENTS ELEMENT OF THE CITY OF ST. AUGUSTINE BEACH COMPREHENSIVE PLAN, for the Board's recommendation to the City Commission regarding amending the Capital Improvements Element of the Comprehensive Plan, to adopt by ordinance inclusion of the St. Johns

County School District's Five-Year Capital Improvements Plan, and improvements, consisting of trails, porous brick pavers for the parking lot, and a nature center, to Ocean Hammock Park, 978 A1A Beach Boulevard, St. Augustine Beach, Florida, 32080.

Mr. Royle said each year, the State requires that the City Commission amend the Capital Improvements Elements of the City's Comprehensive Plan to include the St. Johns County School District's Five-Year Capital Improvements Plan. The adoption of the School District's Five-Year Capital Improvements Plan will have no impact on the City's budget, nor on any land uses in the City, as the building of a public school in the City or on Anastasia Island is unlikely because of the area's vulnerability to storms and the high cost of land on a barrier island. The Board is requested to make a recommendation to the City Commission to adopt the School District's Five-Year Capital Improvements Plan by ordinance, and staff also asks the Board to recommend, as part of the amendment to the Capital Improvements Element of the City's Comprehensive Plan, the Commission include improvements to Ocean Hammock Park, consisting of trails, porous brick pavers for the temporary parking lot, and a nature center, as the inclusion of such improvements in the Comprehensive Plan may help the City get future grant money to implement them.

Ms. Zander MADE A MOTION TO RECOMMEND THE CITY COMMISSION APPROVE AMENDMENTS TO THE CAPITAL IMPROVEMENTS ELEMENT OF THE CITY'S COMPREHENSIVE PLAN, PER ADOPTION BY ORDINANCE TO INCLUDE THE ST. JOHNS COUNTY SCHOOL DISTRICT'S FIVE-YEAR CAPITAL IMPROVEMENTS PLAN, AND THE PROPOSED IMPROVEMENTS TO OCEAN HAMMOCK PARK. The motion was seconded by Mr. Mitherz and passed 7-0 by unanimous voice-vote.

3. DISCUSSION OF CITY'S NOISE REGULATIONS PERTAINING TO OUTDOOR MUSIC, for the Board's recommendations to the City Commission as to whether the City's noise regulations, per Sections 9.02.01—9.02.16 of the City of St. Augustine Beach Land Development Regulations, should, or should not, be amended.

Mr. Guido said aside from the noise regulations in the Land Development Regulations, this Board and the City Commission can set any conditions they want, within reason, on approvals of conditional use permits, including prohibiting outdoor music.

Mr. Whitehouse said conditional use permits are granted for a special use, usually in a commercial zoning district, or a use by exception, by the City Commission, which has the ultimate authority to put reasonable conditions on this approval. Some of the reasonable conditions that have been added to conditional use approval orders have prohibited outdoor music to applicants asking for a special use or a use by exception adjacent to a residential district. He thinks the question staff is bringing to the Board is whether the Board wants to recommend to the City Commission that there should be an ordinance

regulating outdoor music in all zoning districts, so it would apply to everyone, not just those who are granted a conditional use permit or a special use by exception.

Ms. Zander asked if the current noise regulations prohibit someone who doesn't have a special use permit or a use by exception from having outdoor music or speakers.

Mr. Larson said no, as long as the music is below the maximum decibel levels.

Mr. Mitherz disclosed he discussed this agenda item with Ms. Miller and Mr. Glenn Brown in the Building and Zoning Department.

Mr. Guido asked for any other ex-parte communication disclosure from the Board members. There was none. He said what they now have up and down A1A Beach Boulevard is a mix of some businesses that have been grandfathered-in, and some that have come before the Board and the City Commission for a special use permit. This Board has almost exclusively asked applicants applying for a special use permit whether they planned to have outdoor music or speakers of any kind, and in most cases, has recommended to the City Commission that outdoor music or speakers not be allowed.

Mr. Bradfield asked how they've gotten to the point, after setting a standard to allow businesses up and down the Boulevard to have outdoor music and speakers and establishing a maximum decibel level, of suddenly considering prohibiting outdoor music altogether. He asked why the City has a maximum decibel level if music and speakers aren't allowed, as a maximum decibel level means there's a clear intent to allow music to be played, as long as it doesn't exceed a specific decibel level and it's not problematic to the surrounding neighborhood or the good of the public. Mr. Larson has reported two noise complaints in the last 10 years, so 99.99% of the time, there aren't any problems.

Mr. Guido said he has a problem with assuming that just because there's a lack of complaints, there aren't any problems, as most people will not complain. He can sit on his porch on Wednesday nights and hear the music from the concerts at the pier, and he lives more than a quarter-of-a-mile away from the pier.

Mr. Bradfield said that's a very good point, because the standard that's established by that makes this discussion seem a bit outlandish. He disclosed that he and Chris Way are friends and business partners, but his business relationship with Mr. Way does not involve his restaurant, Coquina Beach Surf Club, or any business in this City.

Mr. Guido said he doesn't know if they should specifically be discussing issues with Mr. Way and his restaurant. Mr. Way has been before the Board and City Commission for conditional use permit approval, and the problem there was the proximity of Mr. Way's restaurant to neighboring residential properties. The Board listened to a 45-minute presentation made by residents who lived across the street from the restaurant.

Mr. Bradfield asked if any formal complaints have been made by these residents to the City's Police Department regarding noise or music.

Mr. Whitehouse said this discussion is not about this, not only because it concerns an individual case, but because Mr. Way needed a special use permit for what he wanted to do at his restaurant, and per the conditions of the order granting this special use, it was decided to prohibit outdoor music at his restaurant. Aside from that, this topic has been brought before the Board as a general matter for discussion, and as it is a legislative matter which does not concern any particular application, the Board should probably refrain from discussing specific applications. For clarification, this discussion is about properties that don't need any kind of a special use permit or a use by exception.

Ms. England said as long the City has an appropriate noise ordinance that regulates noise levels, if a resident feels noise levels have been exceeded, he or she can file a complaint. If the City tries to prohibit outdoor music and speakers across the board, it may get to the point where someone can't take a radio outside while they're washing their car. The City's Vision Plan proposed that A1A Beach Boulevard in general should be pedestrian-friendly and have outside seating, so she doesn't see any problem with outdoor music being played at the appropriate decibel level, because if they try to put something in place to prohibit outdoor music, it will take away from the ambience of the Boulevard as proposed by the Vision Plan. She thinks they have what they need in the City's current noise ordinance, unless someone thinks there's a deficiency in keeping noise levels down.

Mr. Mitherz said Mr. Brown, the City's Code Enforcement Officer, told him the City's Police Department is supposed to investigate noise complaints and violations of maximum decibel levels, but he said the Police Department doesn't have anyone trained to do this, and their decibel meter is not properly calibrated to measure decibel levels, so right now, there's no legal way to measure noise levels or enforce the ordinance.

Mr. Bradfield said it's clear they need a way to monitor decibel levels in order to enforce the noise regulations, but for the most part, over the past 10 years, noise complaints have not been a major issue. If the decibel levels of the concerts at the pier were to be compared to decibel levels of other venues with outdoor music along the Boulevard, he thinks they'd find these decibel levels to be a fraction of those of the concerts at the pier.

Mr. Guido said he tends to agree that basically what they have in place now to regulate noise is sufficient, and if they were to further regulate outdoor music, they'd be doing the City a disservice. However, the City's decibel level maximums are not enforced, so maybe the reason they're not getting complaints is because the City can't act on them.

Ms. Zander said if the City isn't getting complaints about noise, she thinks this is indicative that no one has a problem, rather than assuming people have complaints but the City isn't getting them because the Police Department can't act on them.

Mr. Whitehouse said he thinks one of the reasons staff brought this to the Board was to bring to the Board's attention that there are no specific regulations prohibiting outdoor music on properties that do not have a special use permit or a use by exception.

Ms. England said she appreciates this clarification, because she thinks maybe some of the

Board members were under the impression that outdoor speakers are prohibited per se.

Ms. Sloan said if they're looking at the current regulations, Section 9.02.12.A.7, which refers to loudspeakers, states, "No person shall operate, or permit the operation of, any loudspeaker, public address system or similar device, for any commercial purpose."

Mr. Bradfield said he thinks they're identifying loudspeakers and speakers as being one and the same thing, which they're not. If anyone were to complain about the noise levels of entertainment in this City, he's certainly almost positive they're not going to be talking about speakers, but about live music, as when you're talking about decibel levels, music from speakers is something that can easily be controlled. It seems it would be in the best interest of the public to allow outdoor music and speakers, at least on some level, because if it's the intent of the noise regulations that no one shall be permitted to have them whatsoever, why do the regulations have maximum decibel levels, he asked? They can create rules to govern every single thing everyone does, but in the context that there are already pre-existing uses of speakers and outdoor music up and down the Boulevard and a lack of complaints, he thinks it'd be very indifferent of them to consider prohibiting this across the board, and it would also be very inconsistent with every other general marketplace he's ever been around where reasonably-played outdoor music is allowed.

Ms. Zander said she agrees, but doesn't think they can distinguish, at this point, between amplified music and live music, as it really doesn't matter if there's one person or six people playing guitars and singing, as long as the music complies with the decibel levels.

Mr. Guido said he thinks they're missing why Mr. Larson brought this before the Board, which was because he basically wanted them to know there are no regulations on outdoor music in the Land Development Regulations, except with conditional or special use permits, and amendments to these regulations are within the purview of this Board.

Mr. Bradfield said Mr. Larson's memo on outdoor music specifically states, "No text can be found saying that restaurants, etc., cannot have speakers outside." That's a clear and concise opinion that speakers are allowed for a standard property, which is what they're talking about here, not an exception for a special use permit, which may prohibit them.

Ms. England said she thinks they're beating this to death. She has no recommendation to make to the Board or City Commission that the current ordinance should be changed or amended at this time, as it seems to be sufficient as a good noise ordinance as it is.

Mr. Guido said the only thing he'd like to add is that if the Board does make a recommendation to the City Commission, it should be that the Commission do something about getting the necessary equipment to enforce the City's existing noise ordinance, which cannot now be enforced because of a lack of proper equipment. He's hearing a basic consensus from the Board that there's really no reason to adopt new regulations for outdoor music, as this would only compound an existing situation in which some businesses are allowed to have outdoor music and some are not, based on whether or not they've applied for a special use permit which may prohibit outdoor music.

Ms. Sloan said there are some other things in the noise ordinance which she certainly has questions about, but they don't relate to outdoor music. If outdoor music is the only issue they're discussing tonight, she thinks they've discussed it.

Mr. Bradfield said he recommends the Board make no recommendation to the City Commission on this issue.

Mr. Mitherz said he can certainly go along with that, but thinks if the City has a noise ordinance based on decibel levels, a functioning decibel meter and an employee trained and responsible for using it is needed in the Police Department or Code Enforcement Department. Otherwise, the decibel levels should be taken out of the noise regulations.

Mr. Guido suggested several of the Board members could bring this to the attention of the City Commission at the Commission's next meeting, so the Commission can discuss this.

Mr. Bradfield said there definitely needs to be a way to enforce and regulate the noise ordinance, given the fact that it specifies decibel parameters. Without a way to enforce the decibel levels, the noise regulations are pointless.

VII. OLD BUSINESS

There was no old business.

VIII. BOARD COMMENT AND DISCUSSION

Ms. Zander said at the Board's January 21, 2014 meeting, the Board looked at a request to extend the Maratea Planned Unit Development Narrative. She attended the following City Commission meeting of February 3, 2014, at which the Maratea PUD extension request was to be heard by the Commission, but this item was removed from the agenda, because the applicant did not provide authorization for him to appear before the Commission to speak on behalf of the Maratea development corporation's ownership.

Mr. Guido alerted the Board members to be very careful of any ex-parte communication concerning the proposed Maratea PUD extension, as this will come back before the Board, in one form or another.

IX. ADJOURNMENT

The meeting was adjourned at 7:45 p.m.

Chairman

Recording Secretary

Sec. 9.00.00. - Generally.**Sec. 9.00.01. - Purpose and intent.**

It is the purpose of this article to provide appropriate standards relating to the operation of certain activities throughout St. Augustine Beach. Such operations may create or maintain such excessive noise, vibration, air pollution, odor, or electromagnetic interference as to be a detriment to the public health, comfort, convenience, safety, and welfare. These standards are therefore provided to protect the public interest, and promote the public health and welfare.

(Ord. No. 91-7, § 2)

Sec. 9.00.02. - Applicability.

These standards shall apply to all lands within the City of St. Augustine Beach.

(Ord. No. 91-7, § 2)

Sec. 9.00.03. - Standard manuals and measuring devices.

The following references are cited in this article:

40CFR Code of Federal Regulations, Title 40, "Protection of Environment"

FAC17-2 Chapter 17-2, Florida Administrative Code, "Air Pollution"

APAM "Air Pollution Abatement Manual" of the Manufacturing Chemist Association

PHR47 U.S. Public Health Report 47, No. 12, "Measurement of Density Mineral Dust"

ICR12 Industrial Cost Rule No. 12 adopted by the Board of Standards and Appeals of the New York State Department of Labor

CFR10 Title 10, Chapter 1, Part 20, Code of Federal Regulations, "Standards for Protection Against Radiation"

ANSI American National Standards Institute Applicable Standards

(Ord. No. 91-7, § 2)

Sec. 9.01.00. - Noise.**Sec. 9.01.01, 9.01.02. - Reserved.**

Editor's note—

Former §§ 9.01.01 and 9.01.02, previously codified herein and containing portions of Ord. No. 91-7, were repealed in their entirety by Ord. No. 95-12. This repeal became effective March 1, 1996.

Sec. 9.02.00. - Sound control.**Sec. 9.02.01—9.02.09. - Reserved.***Editor's note—*

Former §§ 9.02.01—9.02.08, previously codified herein and containing portions of Ord. No. 91-7, were repealed in their entirety by Ord. No. 95-12. The repeal of §§ 9.02.02 and 9.02.03A became effective March 1, 1996. All other repeal of §§ 9.02.01 and 9.02.03B through 9.02.08 became effective upon passage of Ord. No. 95-12.

Sec. 9.02.10. - Noise—Legislative findings.

It is found and declared that:

- A. Excessive sound within the limits of the city is a condition which has existed for some time and the amount and intensity of such sound must be controlled.
- B. Such excessive sound is a detriment to the public health, safety, welfare and quality of life of the residents of the city in the following regards:
 - 1. The Environmental Protection Agency has published numerous materials relating to the health effects of exposure to noise and its effects on individuals, including "Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety," (E.P.A. 1974).
 - 2. That it has been determined that noise-induced sleep interference can produce adverse effects such as mood changes, decrements in task performance, and changes in cardiovascular responses.
 - 3. Noise has been implicated in the development or exacerbation of health problems, including hypertension, significant increases in both systolic and diastolic blood pressure, psychoses, and effects on blood chemistry, including magnesium imbalance and increased levels of catecholamines epinephrine and norepinephrine.
 - 4. That it has been reported that a nighttime average sound level of thirty-five (35) dB is necessary to protect against sleep interference. Additionally, it has been reported that individuals have reported physiological responses at an average sound level of thirty-seven (37) dB.
 - 5. That there may be expected a sound attenuation within a building of approximately fifteen (15) dB requiring that an outdoor nighttime average of fifty (50) dB is necessary to provide an interior level of thirty-five (35) dB.
- C. The maximum permissible sound levels, the specific prohibitions against noise disturbances and plainly audible sound, and other prohibitions as contained in this Code are the least restrictive regulations which will adequately protect persons from excessive and unreasonable sound.
- D. These regulations for the control of sound are necessary and essential for the purpose of securing and promoting the public health, safety, welfare, and quality of life of the residents of the city.

(Ord. No. 95-12, § 3; Ord. No. 96-05, § 2)

Sec. 9.02.11. - Maximum permissible sound levels.

- A.

It shall be unlawful for any person to create, operate, or cause to be operated on private property any source of sound in such a manner as to create a sound level which exceeds the limits set forth in Table 1 for the land use category of the property receiving the sound when measured at or within the boundary of the property receiving the sound.

TABLE 1
MAXIMUM SOUND LEVELS FOR
RECEIVING LAND USES

Receiving Land Use	Time	Sound Level Limit db(A)
Residential	Daytime	60
	Nighttime	50
Commercial	Daytime	65
	Nighttime	60

- B. The sound level set forth in Table 1 may not be exceeded in any one (1) single incident if the single incident represents a part of the normal operation of the facility.
- C. The provisions of this section shall not apply to:
1. Activities covered by subsections A.2. through 6., inclusive, of section 9.02.12 relating to animals, construction, domestic power tools, emergency devices, and explosives and firearms.
 2. The unamplified human voice.
 3. Sound resulting from safety signals, warning devices, and bells and chimes of churches.
 4. Any sound resulting from activities of a temporary duration for which a permit has been granted by the NCO to the extent allowed under the permit.
 5. Any sound coming from the operation of aircraft (not including model aircraft).
 6. Any sound, the regulation of which is preempted by the federal government, but only to the extent of such federal preemption.
 7. Sounds resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency.
 8. Sounds resulting from emergency work as defined in section 2.00.00
 9. Sounds from the operation of motor vehicles, to the extent they are regulated by Florida statutory law.

(Ord. No. 95-12, § 3; Ord. No. 96-05, §§ 3, 4)

Sec. 9.02.12. - Specific prohibitions.

- A. It shall be unlawful for any person to: (a) make, continue, or cause to be made or continued any noise disturbance, or any sound which is plainly audible as defined in section 2.00.00, in violation of any of the specific prohibitions contained in this section; or (b) otherwise violate any of the specific prohibitions contained in this section.
1. *Amplified sound produced by electronic audio equipment, musical instruments, and similar devices.* No person shall operate, play, or permit the operation or playing of any radio, stereo, tape player, television, or other sound amplifier in such a manner as to: (a) be plainly audible at a distance of two hundred (200) feet or more from the real property boundary of the source of the sound; or (b) create across a real property

boundary a noise disturbance in a residence, office, store, or other building; or (c) if the source of the sound is in a building containing more than one (1) residential unit, create a noise disturbance in another residential unit through a floor, ceiling, or wall separating residential units; or (d) violate the maximum sound levels contained in section 9.02.11

2. *Animals.* No person shall own, possess or harbor an animal or bird that howls, barks, meows, squawks, or makes other sounds that create across a real property boundary a noise disturbance in a residence during the nighttime.
3. *Construction.* No person shall operate or cause the operation of any tools or equipment used in construction, drilling, repair, alteration, or demolition work between the hours of 7:00 p.m. to 7:00 a.m. the following day on weekdays, or between 6:00 p.m. to 10:00 a.m. the following day on weekends or holidays, such that the sound therefrom creates a noise disturbance in a residence across a real property boundary, except for emergency work by public service utilities or for other work approved by the NCO. This section shall not apply to the use of domestic power tools that are regulated in section 9.02.12A.4.
4. *Domestic power tools.* No person shall operate or permit the operation of any mechanically powered saw, drill, grinder, lawn or garden tool, lawnmower, or similar tool between 10:00 p.m. and 7:00 a.m. the following day on weekdays, or 10:00 p.m. and 8:00 a.m. the following day on weekends and holidays so as to create a noise disturbance in a residence across a real property boundary.
5. *Emergency devices.*
 - a. No person shall intentionally sound or permit the sounding outdoors of any fire, burglar or civil defense alarm, siren or whistle, or similar stationary emergency signaling device, except for emergency purposes or for testing as follows:
 - (1) Testing of a stationary emergency signaling device shall not occur between 7:00 p.m. and 7:00 a.m. the following day.
 - (2) Testing of a stationary emergency signaling device shall use only the minimum cycle test time, in no case to exceed sixty (60) seconds.
 - (3) Testing of a complete emergency signaling system, including the functioning of the signaling device and the personnel response to the signaling device, shall not occur more than once in each calendar month. Such testing shall only occur on weekdays and not during the nighttime, and shall be exempt from the time limit specified in paragraph A.5.a.(2), above.
 - b. No person shall permit the sounding of any exterior burglar or fire alarm unless such alarm is automatically terminated within fifteen (15) minutes of activation.
6. *Explosives and firearms.* No person shall use or fire explosives, firearms, or similar devices which create an impulsive sound so as to cause a noise disturbance in a residence across a real property boundary or on a public space or right-of-way, without first obtaining a permit from the NCO.
7. *Loudspeakers.*
 - a. No person shall operate, or permit the operation of, any loudspeaker, public address system or similar device, for any commercial purpose:
 - (1) Which produces, reproduces or amplifies sound in such a manner as to create a noise disturbance or be plainly audible across a real property boundary; or
 - (2)

During the nighttime on a public right-of-way or public space.

- b. No person shall operate, or permit the operation of, any loudspeaker, public address system or similar device, for any noncommercial purpose, during the nighttime in such a manner as to create a noise disturbance in a residence or be plainly audible across a real property boundary.
- B. Noncommercial public speaking and public assembly activities conducted on any public space or public right-of-way shall be exempt from the operation of this section.

(Ord. No. 95-12, § 3)

Sec. 9.02.13. - Terminology and standards.

- A. All terminology in this article relating to sound which is not defined in section 2.00.00 of this Code shall be defined in conformance with applicable publications and standards of the American National Standards Institute (ANSI).
- B. Standards, instrumentation, personnel, measurement procedures, and reporting procedures to be used in the measurement of sound shall be consistent with accepted and sound principles of sound measurement in accord with the standards of the American National Standards Institute.

(Ord. No. 95-12, § 3)

Sec. 9.02.14. - Method of sound level measurement.

A. *Measurement with sound level meter.*

1. The measurement of sound shall be made with a sound level meter meeting the standards prescribed by ANSI S1.4-1971 (R1976). The instrument shall be maintained in calibration and good working order. The sound measuring instrument shall be returned to the manufacturer or their authorized service center for calibration within a period of five (5) years. The sound level calibrator shall be returned to the manufacturer or their authorized service center for calibration annually.
2. An external calibration check shall be made before and after each period of use and at intervals not exceeding two (2) hours when the instrument is used longer than a two (2) hour period. The sound level calibrator shall calibrate the entire sound level meter with an acoustic calibrator of the coupler type.
3. Measurements recorded shall be taken so as to provide a proper representation of the source of the sound. The microphone during measurement shall be positioned so as not to create any unnatural enhancement or diminution of the measured sound. A windscreen for the microphone shall be used at all times.
4. The slow meter response of the sound level meter shall be used in order to best determine the average amplitude.
5. The measurement shall be made at any point on the property into which the sound is being transmitted and shall be made at least three (3) feet away from any ground, wall, floor, ceiling, roof, and other plane surface.
6. In case of multiple occupancy of a property, the measurement may be made at any point inside the premises to which any complainant has the right of legal private occupancy; provided that the measurement shall not be made within three (3) feet of any ground, wall, floor, ceiling, roof, or other plane surface.
7. All measurements of sound will be made by qualified officials of the city who are designated by the NCO to operate the apparatus used to make the measurements.

- B. *Measurement without sound level meter.* Any police officer or other official designated by the NCO who hears a sound that is plainly audible in violation of section 9.02.12, shall measure the sound as follows:
1. The detection of sound shall be by use of the official's normal hearing faculties, so long as the official has ordinary hearing ability and his hearing is not enhanced by any mechanical device, such as a hearing aid.
 2. The official must have a direct line of sight and hearing to the real property of the source of the sound so that the official can readily identify the offending source of the sound and the distance involved. If the official is unable to have a direct line of sight and hearing to the real property of the source of the sound, then the official shall confirm the source of the sound by approaching the suspected real property source of the sound until the official is able to obtain a direct line of sight and hearing, and identify the identical or same sound that was heard at the place of original measurement of the sound.
 3. The official need not determine the particular words or phrases being produced or the name of any song or artist producing the sound. The detection of a rhythmic bass reverberating type of sound is sufficient to constitute a plainly audible sound.

(Ord. No. 95-12, § 3)

Sec. 9.02.15. - Permits to exceed sound levels.

- A. Application for a permit for relief from the maximum sound level limits may be made in writing to the NCO. Any permit granted by the NCO hereunder must be in writing and shall contain all conditions, including the time periods and beginning and ending dates, upon which the permit is granted. In determining whether to grant or deny the permit, the NCO shall balance the hardship to the applicant, the community, and other persons of not granting the permit against the adverse impact on the health, safety, and welfare of persons affected, the adverse impact on property affected, and any other adverse impacts of granting the permit. The NCO may grant the applied for permit only as follows:
- B. The NCO may prescribe any reasonable conditions or requirements he deems necessary to minimize adverse effects upon the community or the surrounding neighborhood including use of mufflers, screens or other sound attenuating devices.
- C. Permits may be granted for the purpose of entertainment under the following conditions:
1. The function must be open to the general public (admission may be charged).
 2. The function must take place on public property.
 3. The permit will be given for only eight (8) hours in one (1) twenty-four-hour day.
 4. The authorization to exceed maximum sound level limits shall be limited to [between] the hours of 9:00 a.m. and 10:00 p.m. the same day.
- D. Permits for nonentertainment special purposes may be issued by the NCO under the following conditions:
1. If the special purpose relates to the operation of a trade or business, the special purpose must not be in the ordinary course of that trade or business and must be necessary to the operation of the trade or business;
 2. If the special purpose does not relate to the operation of a trade or business, the special purpose must not be an ordinary event in the affairs of the applicant and must be compatible with the ordinary activities within the neighborhood in which the special purpose is proposed to occur.
 - 3.

If the special purpose is a recurring one, it must not recur more than four (4) times each calendar year; and

4. Except in emergency situations, as determined by the NCO, the special permit may be issued for eight (8) hours (between 7:00 a.m. and 10:00 p.m. the same day) only; and
 5. Permit may be issued for no longer than fifteen (15) consecutive days, renewable by further application to the NCO.
- E. No permit may be issued to permit the use of any loudspeaker or sound amplifier on the exterior of any building which at any time exceeds the sound level limits in Table 1 except those used for emergency warnings.
- F. The city commission shall review any decision of the NCO granting or denying a permit upon its own motion or application by any interested person. Appeal of a decision of the city commission shall be made to a court of competent jurisdiction. Review by the court shall be de novo.
- G. Permits issued for sound shall not abrogate the effect of other regulations or laws.
- (Ord. No. 95-12, § 3; Ord. No. 00-23, §§ 2, 3, 9-11-00)

Sec. 9.02.16. - Violation procedures.

- A. The procedure for violations of maximum sound levels on residential and commercial property, and violations of the plainly audible standard on residential and nonposted commercial property shall be as follows:
1. When a NCO determines that sound is being made, produced, or reproduced on residential property or posted or nonposted commercial property, and such sound is in excess of the maximum sound level limits of section 9.02.11, the NCO shall issue an official warning to the person or persons responsible for the sound. The warning shall advise the person of the violation, and of the possible penalty if the person fails to eliminate the sound or reduce the sound so that it is within permitted limits.
 2. When a NCO determines that sound is being made, produced, or reproduced on residential property or nonposted commercial property, and such sound is plainly audible in violation of section 9.02.12, the NCO shall issue an official warning to the person or persons responsible for the sound. The warning shall advise the person of the violation, and of the possible penalty if the person fails to eliminate the sound or reduce the sound so that it is not plainly audible.
 3. The person or persons receiving a warning pursuant to paragraphs A.1. or 2. above shall have a reasonable time, as defined in section 2.00.00, to comply with the warning.
 4. It is sufficient warning if the person or persons responsible for any succeeding sounds are warned under paragraphs A.1. or 2, above of one (1) offending sound of the same type during a fifteen-day period.
 5. If the sound is not eliminated or reduced to allowable limits within a reasonable time after the warning, or if the offending sound is abated and then reoccurs, the person so warned and not complying shall be issued a notice to appear for violation of the applicable section of this article and upon conviction shall be subject to the penalties designated in section 12.10.03
- B. The procedure for violations of the plainly audible standard on posted commercial property is as follows:
- 1.

When a NCO determines a person or persons are making, causing or allowing the making of sound that is in violation of the plainly audible standard on commercial property posted as described below, the official shall issue a notice to appear for violation of section 9.01.12 to such person or persons who, upon conviction, shall be subject to the penalties in section 12.10.03

2. Commercial property shall be considered posted for the purposes of this section if at least one (1) warning sign is posted in a conspicuous place on the property, clearly visible and readable to all persons entering the property, warning persons that sound that is plainly audible is prohibited. Signs shall read as follows:

WARNING

Playing a stereo, radio, sound amplifier,
or musical instrument
that can be heard 200 feet
away is prohibited.
City Code Sec. 9.02.12

Letters in the word "WARNING" must be at least two (2) inches high and in bold type. Letters for the remaining text must be at least one (1) inch high in normal type, and the words "City Code Sec. 9.02.12" must be at least one-half (½) inch high in normal type. All letters must be light-reflective on a contrasting background. The sign structure contained the required warning must be permanently installed with the word "WARNING" not less than three (3) feet and not more than six (6) feet above floor level.

3. Any owner or tenant of commercial property who posts the property as described above shall not be held responsible for sound made by invitees or licensees on the property who are cited for violation of the plainly audible standard while on the property.

C. The procedure for a noise disturbance is as follows:

1. A complaint regarding a noise disturbance that is not measured by the sound level meter or does not exceed the decibel limits and is not plainly audible as defined in section 2.00.00 must be made by a person who is an owner or tenant of any building subjected to the noise disturbance.
2. When a complaint is made, the NCO shall investigate the complaint. If the NCO finds probable cause to believe a person is in violation of this article, the NCO shall issue a warning.
3. If the person responsible for causing or allowing the creation of a noise disturbance does not abate it within a reasonable time as defined in section 2.00.00, or if the noise disturbance is abated and then reoccurs, the complainant may file a sworn complaint with the state attorney.
4. Any person found guilty of creating a noise disturbance in violation of section 9.02.12 based on a sworn complaint shall be punished as provided in section 12.10.03

- D. *Joint and several responsibility.* Except as stated in section 9.02.16B.3., the owner, tenant or lessee of a property, or a manager, overseer or agent, or any other person lawfully entitled to possess the property from which the offending sound is emitted at the time the offending sound is emitted, shall be responsible for compliance with sections 9.02.10 through 9.02.16. It shall not be a lawful defense to assert that some other person caused the sound. The lawful possessor or operator of the premises shall be responsible for operating or

maintaining the premises in compliance with said sections of this Code and shall be punished whether or not the person actually causing the sound is also punished.

(Ord. No. 95-12, § 3; Ord. No. 96-05, § 5)

FYI: From Vice-Mayor O'Brien

Subject of: Outdoor music:

Studying our code revealed some things to me, let me share them with you:

Here is what does NOT exist:

- There is no code or regulation that prohibits playing outdoor music or amplified music outdoors except at garage sales.
- **What does exist is:**
- That we have a noise control officer (NCO) who is the Chief of Police or his/her designee.
- Out of date equipment at the Police Department to measure decibel levels. Not faulting them just a fact.
- There are decibel levels by day and different by night for residential and different for commercial.
- Inside music has a restriction for noise levels that restricts how far away from the address producing the music can be heard. Typically that is 200 feet from the property line.
- Special permits may be granted that allow special events to exceed decibel levels which must be approved in advance by the Noise Control Officer. Such as the events at Pier Park.
- There are conflicts as to what business or types of business may and may not have music.

Here are some examples of some conflicts in addressing outdoor music:

- Food establishments that have a Conditional use permit with outside seating are typically prohibited from playing any kind of music outside except: (formerly) The Groove was granted permission. There may be others.
- Some food establishments that have been granted a conditional use prohibiting one thing or another have returned to P & Z and the Commission to revise their Conditional Use Permit which was approved while others who have returned to revise theirs have not been approved and have had nearly identical requests in similar locations.

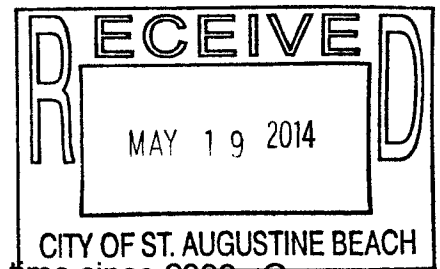
- If you are a business without no outside seating without a conditional use permit prohibiting otherwise you can play music outside 24 hours a day within the decibel levels in our code without further restriction.

Summary:

- Our City has a Vision Plan that encourages a Boulevard that has restaurants with street side outside dining yet we do not allow outdoor music of any kind in most cases, yet in some cases we do.
- I think most of us would agree that we must maintain a balance between commercial and the adjacent residential.
- Business conditions, competition and opportunities change and we should allow a business to return to tweak their conditional use permit given the very challenging economic times.
- Our City's outdoor music policy/code has not been reviewed for many years while our City's demographics and trends have changed. Conflicts do exist and we should treat all fairly and equally.
- It's time to review our outdoor music policies/codes and I am requesting that the Commission ask Planning & Zoning to review and recommend any changes.

May 6, 2014

To the Plan Board of St. Augustine Beach, Florida:



I have been a part-time resident of this city since 1975, and full-time since 2008. Over the years, this community has grown a great deal, especially along what is now A-1-A Beach Boulevard. Empty lots were once plentiful and cheap; the city and beaches were nearly deserted from September to April. Now empty lots are hard to find, and the beach is crowded even in the winter. St. Augustine and St. Augustine Beach have become travel destinations for many, as well as being notable communities in which to live. The City Commission and Plan Board have done a good job of steering our city's growth to accommodate the needs of residents, businesses, and tourists. Now the issue of noise and outdoor music has been referred to the Plan Board, then back to the City Commissioners for further action.

I am hoping you can formulate guidelines that take into consideration the fact that there are many year-round residents living near Beach Boulevard, the location for most of the requests for outdoor music. If you drive down Beach Boulevard on school mornings, you'll see the youngsters out waiting for the bus. Those children need to have a good night's sleep before school. A band blaring from a nearby restaurant until 10:00 PM is not appropriate. I have complained to the police more than once about loud music from the bar on A Street five blocks away disturbing my sleep late at night, even with my windows closed. Imagine how that affects families with children! Sometimes, we residents like to open our windows to catch the sea breeze and hear the ocean's roar at night, or listen to the wind rustling in the palm trees. If we want to hear music, we'll listen to some of our own choosing in the privacy of our homes, without disturbing our neighbors. I like to hear music at restaurants and in bars, but think the sound should be restricted to those who are in attendance, not blasted outside to attract more clientele. I don't want to hear the "Battle of the Bands" blaring from rooftops as I drive down our lovely boulevard.

We can continue to have a harmonious community that allows mixed use of the land, with equal attention to the needs of all of the residents, not just businesses. Many of the homes here were built before the "boom" in tourism, with the expansion of the restaurants and hotels coming later. Some of the full-time residents have been driven out already, due to the noise of the "party houses" that have resulted from the short-term rental permits that have no supervision. Those of us who do not live in gated communities rely on our City's Plan Board and Commissioners to ensure quality of life for all of its citizens, not just businesses. Please consider all of our needs when you deliberate on this issue.

Thank you for all you do,
Sincerely,
Linda Ringwood