INTRODUCED BY: **ORDINANCE NO. 2009-06**

A BILL TO BE ENTITLED

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF NEPTUNE BEACH, FLORIDA AMENDING CHAPTER 13 NOISE, SECTION 13-5 NOISE PROHIBITED; UNNECESSARY NOISE STANDARD; STATEMENT OF INTENT; SWORN COMPLAINT REQUIRED; PROPERTY OWNER RESPONSIBILITY AND SECTION 13-6. VIOLATION; PENALTIES AND PROVIDING AN EFFECTIVE DATE.

Whereas, the City Council of the City of Neptune Beach, Florida has determined that it is necessary to amend the following:

Now, Therefore, be it ordained by the City Council of Neptune Beach, Florida:

Section 1. Sec. 13-5. Noise prohibited; unnecessary noise standard; statement of intent; sworn complaint required; property owner responsibility is hereby amended as follows:

(a) Some sounds may be such that they are not measurable by the sound pressure level meter or may not exceed the limits of table I or table II, but they may be excessive, unnatural, prolonged, unusual, loud or raucous, and are a detriment and a disturbance because of their volume or duration to the public health, comfort, convenience, safety, welfare and prosperity of reasonable persons of ordinary sensibilities within the limits of the City of Neptune Beach.

(b) Noises prohibited by this section are unlawful notwithstanding the fact that no violation of section 13-3 is involved, and notwithstanding the fact that the activity complained about is exempted in section 13-3(g). Thus, the following acts, among others, are declared to be loud, disturbing, raucous and unnecessary noises in violation of this chapter; but said enumeration shall not be deemed to be inclusive:

(1) The sounding of any horn or signaling device on any automobile or other vehicle, except as a danger warning; the creation by means of any signaling device of any unreasonably loud or harsh sound, the sounding of any signaling device for any unnecessary and unreasonable period of time; and the unreasonable use of any signaling device.

(2) The using, operating or permitting to be placed, used or operated any radio, television, tape, compact disk or record player, amplifier, musical instrument or other machine or device used for the production, reproduction or emission of sound, any loud, raucous or prolonged sounds made by people, and the keeping or any animal or bird which by causing frequent or long continuous noise in such manner as to disturb the

public peace, quiet and comfort of the neighboring inhabitants or at any time with greater intensity than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such sound emitter is operated and who are voluntary listeners thereto. Quieter standards are expected during the nighttime hours.

(3) Local, vocal noises. Yelling, shouting, whistling and singing, so as to create a loud and raucous noise so as to annoy or disturb the quiet comfort or repose of persons in any office or place of business or in any dwelling, hotel or other type of residence.

(c) The department of public safety and all officers under its supervision may issue a citation for a civil penalty. A surcharge equal to all administrative costs, including but not limited to any filing fees required by the clerk of court for the filing of civil citations by the City of Neptune Beach shall be assessed and collected from the defendant upon each civil penalty imposed for violation of this section. For violations of this chapter, the civil penalty shall be assessed and paid in the following amounts:
First offense . . . $ 100.00
Second office . . . 300.00
Third and any subsequent offense . . . 500.00

(d) A defendant may pay the civil penalty as specified above in lieu of appearing in county court. A defendant may exercise this option by paying the specified fine at the public safety building within ten (10) days of their violation. If the civil penalty is not paid by such time, the city shall proceed to enforce such violation as otherwise provided by law.

(e) *Responsibility of owner of property.* Separate and distinct from subsection 13-5(c), the owner of the residence, lot of record or property from which the offending noise is emitted, shall be responsible for compliance with this chapter, and may be punished for violations of this chapter. Any person making a complaint under this subsection shall be required to sign a sworn complaint.
In the event that there are ~~three (3)~~ two (2) or more sworn complaints by ~~three (3)~~ two (2) different persons for ~~three (3)~~ two (2) separate incidents within twelve (12) months or ~~three (3)~~ two (2) documented police reports of disturbances all pursuant to this subsection, subsection (c) above or any combination of the above on the same residential property, the owner of that property on which the sworn complaints are made shall be guilty of a violation of this subsection and subject to Code Enforcement Board proceedings pursuant to section 2-440 of this Code and is subject to the penalties provided in F.S. ch. 162.
As a condition precedent to code enforcement action against a property owner, it will be necessary for the city to have provided the property owner, his agent or property manager notice of each sworn complaint or police report within thirty (30) days after the sworn complaints are received by the city.

(f) *Violation may be declared public nuisance* . A violation of subsection (e) above is declared to be a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

Section 2. Sec. 13-6. Violation; penalties is hereby amended as follows.

(a) *Warnings:*

(1) When the city manager or official designated by the city manager determine, in compliance with section 13-3(c), that there is a violation of the noise level limits contained herein, he/she ~~shall~~ has the option to issue an official warning to the person or persons responsible for the noise. The warning shall advise the person of the violation of the allowable noise limits, and of the possible penalty if he/she fails to reduce or eliminate the noise to such allowable limits.

(2) After the person or persons responsible for the noise are given such warning, a reasonable time to comply with the same shall be given. If the limits of table I in section 13-3(d)(1) are exceeded, a "reasonable time" is instanter. Absent special circumstances, "reasonable time" (where table I limits are not exceeded) as used in this section is considered fifteen (15) minutes in the case of nonvehicular noise emitters.

(3) For the purposes of this section, it is sufficient warning for all prohibited noises if the person or persons responsible for any succeeding noises are warned of one (1) offending noise of the same type per six-month period.

~~(4) Only one (1) warning shall be necessary prior to enforcing the provisions of this chapter.~~

(b) *Arrest; confiscation of noise emitter:*

(1) If the noise level is not reduced or eliminated to allowable limits within a reasonable time after the warning as prescribed in section 13-6(a) the person so warned and not complying shall be arrested for a violation of this chapter and upon conviction shall be subject to the penalties designated in section 1-12 of the Neptune Beach Code of Ordinances. Each day the violation continues shall be considered as a separate offense.

(2) Any person responsible for an unlawful noise shall be subject to the loss of the noise emitter or emitters if they are convicted two (2) times under this chapter within a twelve-month period and if the convictions were for noises created by the same or same type of noise emitter. Upon the third conviction, the appropriate court shall confiscate the noise emitter and deposit it with city manager until such time as the offender can positively demonstrate to the court his/her willingness and ability to operate the emitter within the limits prescribed by this chapter. Any further conviction shall result in permanent confiscation by the appropriate court.

(3) The city manager shall notify the operator of any device which produces noise in excess of the limits set by table I section 13-3(d)(1) that it is a health hazard. The city manager shall have power and authority to have the device removed or toned down instanter until such time as it can be otherwise operated in compliance with this chapter.

(c) *Responsibility of owner of property.* The owner, tenant or lessee of property, or a manager overseer or agent, or any person lawfully entitled to possess the property from which the offending noise is omitted and at which time the offending noise is emitted shall be responsible for compliance with this chapter, and each may be punished for violations of this chapter. It shall not be a lawful defense to assert that some other person caused the noise, but the lawful possessor of the premises shall be responsible for operating or maintaining the premises in compliance with this chapter and shall be punished whether or not the person actually causing the noise is also punished.

(d) *Violation may be declared public nuisance.* The operation or maintenance of any device, instrument, vehicle or machinery in violation of any provisions of this chapter endangers the comfort, repose, health and peace of residents in the area is declared be a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

Section 3 This Ordinance shall become effective immediately upon its final passage and adoption by the City Council.

VOTE RESULTS OF FIRST READING:

Mayor Harriet Pruette	Yes
Vice Mayor John Weldon	Yes
Councilor Fred Lee	Yes
Councilor Eric Pardee	Yes
Councilor Kara Tucker	Yes

Passed on First Reading this 6th day of July, 2009.

VOTE RESULTS OF SECOND AND FINAL READING:

Mayor Harriet Pruette
Vice Mayor John Weldon
Councilor Fred Lee
Councilor Eric Pardee
Councilor Kara Tucker

Adopted on Second and Final Reading this day of , 2009.

Harriet Pruette
Mayor

ATTEST:

Lisa Volpe, CMC
City Clerk

Approved as to form and correctness:

Christopher A. White
City Attorney