

Introduced By: Council Member Wilson

1st Reading: April 2, 2018

2nd Reading: April 16, 2018

ORDINANCE NO. 2018-8106

AN ORDINANCE AMENDING CHAPTER 18 “NOISE”, OF THE CODE OF ORDINANCES OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, BY AMENDING SECTION 18-7 “LOW VOLUME OUTDOOR AMPLIFIED AND ACOUSTIC SOUND”, PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

WHEREAS, there exists the production or emission of noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten the residents and guests of the city, and

WHEREAS, the city understands that outdoor dining adds to the ambiance of an establishment, and with that, music played at a low volume can further increase that ambiance, and

WHEREAS, Chapter 166, Florida Statutes, authorizes the City Council, acting for the City of Jacksonville Beach, Florida, to adopt Ordinances and Resolutions necessary for the exercise of its powers and to prescribe fines and penalties for the violation of Ordinances in accordance with law, and

WHEREAS, through citizen input, the City Council has determined a need to more effectively control and abate noise disturbances in the City, and

WHEREAS, the city seeks to protect, preserve and promote the health, safety, welfare, and quality of life of its residents and guests by the reduction, control, and prevention of noise, and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JACKSONVILLE BEACH, FLORIDA:

SECTION 1. That Chapter 18. Noise of the Code of Ordinances of the City of Jacksonville Beach, Florida is hereby repealed in its entirety, and a new Chapter 18. Noise is hereby adopted and shall read as follows:

Sec. 18-1. Legislative findings; declaration of necessity.

It is found and declared that:

- (1) The making and creation of excessive, unnecessary or unusually loud noises within the limits of the city is a condition which has existed for some time and the amount and intensity of such noises is increasing;
- (2) The necessity in the public interest for the provisions and prohibitions hereinafter contained and enacted is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the city and its inhabitants.

Sec. 18-2. - Noncompliance with chapter declared unlawful; exception.

It shall be unlawful, except as expressly permitted herein, to make, cause or allow the making of any noise or sound which exceeds the limits set forth in this chapter.

Sec. 18-3. - Noise limitations.

(a) Definitions. For the purpose of this section, certain words and phrases used herein are defined as follows:

A-band level is the total sound level of all noise as measured with a sound level meter using the A weighing network. The unit of measurement is the dB(A).

Daytime is defined as 7:00 a.m. to 10:00 p.m. and *nighttime* is defined as 10:00 p.m. to 7:00 a.m. in residential use occupancies.

Decibel is a unit (dba) of sound equal to ten (10) times the logarithm (base 10) of the ratio of any two (2) quantities proportional to power.

Emergency work is the work made necessary to protect persons or property from exposure to danger.

Noise level is the sound pressure level as measured in dB(A) by a sound level meter.

Outdoor restaurant or bar means any restaurant or bar, or portion thereof, which exists outside of the permanent exterior walls of the principal building(s) on a lot. This definition includes any deck or other area constructed and/or utilized on the roof of a structure.

Person is any person, person's firm, association, copartnership, joint venture, corporation or any entity public or private in nature.

Sound-level meter is an instrument including a microphone, an amplifier, an outlet meter, and frequency weighing networks for the measurement of noise and sound levels in a specified manner.

Sound pressure level, in decibels, of sound is twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of this sound to the reference pressure, which reference pressure must be explicitly stated.

Plainly Audible shall mean any sound that can be heard clearly by a person using his or her unaided hearing faculties. When music is involved, the detection of rhythmic bass tones shall be sufficient to be considered plainly audible sound.

All time referred to in this chapter shall be the then current legal time in the City of Jacksonville Beach.

All technical definitions are in accordance with American Standard S1.1-1960 entitled, "Acoustical Terminology."

(b) Classification of use occupancies; projection of noise from one use to another.

- (1) *Classification.* For purposes of defining the "use occupancy", all premises containing habitually occupied sleeping quarters shall be considered in residential use.

All premises containing businesses where sales, professional or other commercial use is legally permitted shall be considered commercial use.

All premises where manufacturing is legally permitted shall be considered manufacturing use.

In cases of multiple uses, the more restrictive use category shall prevail. Hospitals, schools, and church areas are considered residential. Any area not otherwise classified shall conform to commercial standards.

- (2) *Projection of noise.* Sound or noise projecting from one use occupancy to another use occupancy with a different noise level shall exceed neither the limits of the use occupancy into which the noise is projected nor the noise limits of the use occupancy from which the noise originates.

(c) Measurement of noise.

- (1) The measurement of sound or noise shall be made with a sound level meter meeting the standards prescribed by the American National Standards Institute, S1.4 American National Standard Specifications for sound level meters. The instruments shall be maintained in calibration and good working order. A calibration check shall be made of the system at the time of any noise measurement. Measurements recorded shall be taken so as to provide a proper representation of the noise source. The microphone during measurement shall be positioned so as not to create any unnatural enhancement or diminution of the measured noise. A windscreen for the microphone shall be used at all times.
- (2) The slow meter response of the sound level meter shall be used in order to best determine the average amplitude.

- (3) The measurement shall be made at any point outside of the property line from where the noise is being transmitted.
- (4) In case of multiple occupancy of a property, the measurement may be made at any point inside the premises to which any complainant has 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.
- (5) All noise measurements provided for in this chapter will be made by officials of the city who are qualified to operate the apparatus used to make the measurements as provided for in this chapter.

(d) Tables of noise level limits.

- (1) *Table I.* Table I specifies noise levels which represent limits which if exceeded interfere with the peace, quiet and general welfare of the city and its inhabitants. No noise shall be permitted within the city which exceeds the noise level limits of Table I except as expressly authorized by this chapter.

TABLE I

**Maximum Allowable Noise Level Limits
in dB(A) for Residential,
Commercial, and Manufacturing Occupancies**

These levels may not be exceeded more than three (3) times in any continuous sixty-minute period.

District	Day (7:00 a.m. to 10:00 p.m.)	Night (10:00 p.m. to 7:00 a.m.)
Residential	70	65
	Day (7:00 a.m. to 10:00 p.m.)	Night (10:00 p.m. to 7:00 a.m.)
Commercial	75	75
Manufacturing	70	65

- (2) *Table II.* Table II specifies noise levels which if produced by moving vehicles will interfere with the peace, quiet, and general welfare of the city and its inhabitants.

TABLE II
NOISE LEVEL LIMITS FOR
MOVING MOTOR VEHICLES*

- (1) *Trucks and buses.* Eighty-five (85) dB(A) measured fifty (50) feet from the source.
- (2) *Passenger cars, motorcycles, and other motor vehicles.* Seventy (70) dB(A) measured at fifty (50) feet from the source.

*The measurement is made as the vehicle drives past. If the reading is above that listed in (1) or (2) of Table II at any time, the vehicle is in violation of this chapter. All distances are measured from the center of vehicle or center of the driving lane in which the vehicle is being driven.

(e) Motor vehicles.

- (1) *Stationary vehicles.* It shall be unlawful to start, operate, or perform repair work on a motor vehicle which creates a noise or sound which exceeds the noise level limits in Table II.
- (2) *Moving vehicle.* It shall be unlawful to operate a motor vehicle in such a manner as to exceed the noise level limits of Table II when the vehicle is operating on public streets, highways, driveways, parking lots, and ways open to vehicle travel. Normal operation includes normal acceleration, deceleration and operation at maximum normal speeds in all gears and ranges up to the speed limits currently effective on those streets of the city over which the vehicles may be operated.

(f) Building operations. It shall be unlawful for any person to erect (including excavate), demolish, alter, or repair any building other than between the hours of 8:00 a.m. and 6:00 p.m., Monday through Saturday, or at any time on Sundays or the following observed holidays: New Years Day, Memorial Day, 4th of July, Labor Day, Thanksgiving, and Christmas, except in the case of urgent necessity in the interest of public safety and then only with a permit approved by the city manager, which permit may be renewed for a period of three (3) days or less while emergency continues.

(g) Exemptions. The following uses and activities shall be exempt from noise level regulations:

- (1) Air conditioners and lawn mowers when this equipment is functioning in accord with the manufacturers' specifications and with all manufacturers'

mufflers and noise reducing equipment in use and in proper operating condition.

- (2) Non-amplified crowd noises resulting from the activities such as those planned by student, governmental or community groups.
- (3) Reserved.
- (4) Noises of safety signals, warning devices and emergency pressure relief valves.
- (5) Noises resulting from any authorized emergency vehicle while responding to an emergency call or acting in time of emergency.
- (6) Noises resulting from emergency work as defined in section 18-3(a).
- (7) Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit therefor has been granted by the city in accordance with sections 18-3(h) (Special Event Permits). Regulation of noises emanating from operations under permit shall be according to the conditions and limits contained in sections 18-3(h).
- (8) Noises made by persons having obtained a permit to use the streets are exempt from Table I.
- (9) Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control instruction used pursuant to and within the duly adopted federal air regulations shall be exempt from the provisions of this chapter. Any aircraft operating under the technical difficulties in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal regulations are also exempt.

(h) Special event permits. Applications for a permit for relief from the maximum allowable noise level limits designated in this chapter may be made in writing to the city manager or his/her designee. Any permit granted by the city manager hereunder must be in writing and shall contain all conditions upon which the permit shall be effective. The city manager or his/her designee may grant the relief as applied for under the following conditions:

- (1) The city manager or his/her designee 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.
- (2) *Permits for entertainment.* Permits may be granted for the purpose of entertainment under the following conditions:
 - (a) The function must take place on public property.

- (b) The function must be staged between the hours of 8:00 a.m. and 10:00 p.m.
- (c) Functions for which the permits are issued shall be limited to a noise level not to exceed eighty-five (85) dB(A) more than three (3) times in any continuous sixty-minute period, when measured in accordance with section 18-3(c). The city manager or his/her designee may, at his/her sole discretion, establish a lower maximum noise level based on the location or other relevant circumstances relating to the specific special event or noisemaking device.

(i) Other. Special permits for non-entertainment special purposes may be issued under the following conditions:

- (a) 1. If the special purpose relates to the operation of a trade or business that the special purpose not be in the ordinary course of that trade or business; or,
2. If the special purpose does not relate to the operation of a trade or business, that the special purpose not be an ordinary event in the affairs of the applicant; and,
- (b) If the special purpose be a recurring purpose, that it not recur more often than four (4) times each calendar year; and
- (c) 1. That the special purpose be absolutely necessary to the operation of the applicant's trade or business; or,
2. If the special purpose does not relate to the operation of a trade or business, that the special purpose be compatible with the ordinary activities of the neighborhood in which the special purpose is to occur; and,
- (d) Except in emergency situations, as determined by the city manager or his/her designee, the special permit may be issued only for hours between 7:00 a.m. and 11:00 p.m. on week days; and,
- (e) Special permits may be issued for no longer than one week, renewable by further application to the city manager or his/her designee.
- (f) No permit may be issued to permit the use of any loudspeaker or sound device on the exterior of any building which at any time exceeds the noise level limits in Table I except those used for emergency warnings.

Sec. 18-4. - Noises prohibited; unnecessary noise standard; statement of intent; sworn complaint required.

(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 II, but they may be excessive, unnatural, prolonged, unusual and are a detriment to the public health, comfort, convenience, safety, welfare and prosperity of the residents of the city.

(b) Noises prohibited by this section are unlawful notwithstanding the fact that no violation of section 18-3 is involved, and notwithstanding the fact that the activity complained about is exempted in section 18-3(g). Thus, the following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this chapter, but said enumeration shall not be deemed to be exclusive:

- (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 or record player, amplifier, musical instrument, or other machine or device used for the production, reproduction or emission of sound, any prolonged sounds made by people, and the keeping of 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.
- (3) Any person making a complaint under this section shall be required to sign a sworn complaint prior to an arrest being made, otherwise no such complaint will be honored.

Sec. 18-5. - Violations; penalties.

(a) Notice of Noise Violation

- (1) When the city manager or an official designated by the city manager determines that there is a violation of the noise level limits contained within Table I in section 18-3(d)(1), he/she shall issue an official Notice of Noise Violation to the person or persons responsible for the noise. The Notice of Noise Violation shall advise the person of the violation of the allowable noise limits, and of the possi-

ble 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 notice, the person responsible for the noise shall instantly comply with the limits of Table I in section 18-3(d)(1).
- (3) For the purposes of this section, it is sufficient notice for all prohibited noises if the person or persons responsible for any succeeding noises are provided a Notice of Violation of one offending noise of the same type per twenty-four-hour period.
- (4) If a person or persons have been issued one written Notice of Noise Violation, no other notice shall be necessary within that sixty-day period following the notice for enforcement of the provisions of this chapter for any additional violations occurring within the same sixty-day period.

(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 Notice of Noise Violation as prescribed in section 18-5(a), the person so provided a Notice of Violation and not complying shall be arrested for a violation of this chapter and upon conviction shall be subject to the penalties designated in section 1-11 of the Jacksonville 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 three (3) 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.

(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 emitted 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 that endangers the comfort, repose, health and peace of residents in the area 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.

Sec. 18-6. - Mobile noise.

(a) It shall be unlawful for the driver of a vehicle to operate or permit the operation of any sound amplification system which can be heard and is plainly audible outside the vehicle from fifty (50) or more feet while moving or parked on any street, highway, parking lot or other public property within the city.

(b) It shall be unlawful for any person to operate any type of portable sound amplification device so as to emit noise that is plainly audible fifty (50) feet or more from the source. Said violation can result in the confiscation of the equipment until such time as the offender can positively demonstrate to the court his/her willingness and ability to operate the device within the limits prescribed by this section.

(c) Violations of this section shall not require a warning prior to issuing the citation.

Sec. 18-7. – Low Volume Outdoor Amplified and Acoustic Sound.

(a) Definitions. For the purpose of this section, certain words and phrases used herein are defined as follows:

Acoustic sound shall mean the sound that solely or primarily uses instruments that produce sound through acoustic means, as opposed to electric or electronic means. For the purpose of this chapter, drums or drum machines are not considered to be acoustic sound.

Alcoholic beverage establishment shall mean any commercial establishment located in the city which allows for alcoholic beverages (e.g., beer, wine, or liquor, etc.) to be sold for consumption on the premises.

Amplified entertainment shall mean any type of music or other entertainment delivered through and by an electronic system, including live bands and disc jockeys.

Amplified Sound shall mean any type of sound delivered through and by electric or an electronic system.

Emergency work shall mean the work made necessary to protect persons or property from exposure to danger.

Enclosed Building shall mean a structure with a roof and enclosed walls.

Entertainment sound shall mean any sound originating from an event, performance, or act designed to entertain others.

Licensed Establishment shall mean any business, within the city of Jacksonville Beach, licensed to sell food, beverages, and/or alcoholic beverages. The provisions of this section shall apply to the following state alcoholic beverage license types: **1-COP**

(beer only consumption on premises), **2-COP** (beer and wine consumption on premises), **4-COP Quota License** (beer, wine, and liquor package sales and consumption on premises), **4-COP-S** (beer, wine, and liquor consumption on premises in connection with the operation of a hotel, motel, motor court, or condominium), **4-COP-SRX** (beer, wine, and liquor consumption on premises in connection with a restaurant), **4-COP-SBX** (beer, wine, and liquor consumption on premises in connection with a bowling alley), **11-GC** (beer, wine, and liquor consumption on premises in connection with a golf club), **11-C** (beer, wine, and liquor in connection with a bona fide club, including fraternal or benevolent association lodges or clubs, social clubs, and tennis, racquetball, cabana, or beach clubs, for consumption on premises by members and their guests only), **ODP** (beer, wine, and liquor consumption on premises for a bona fide non-profit civic organization for a period not to exceed three (3) days and no more than three (3) times per year), and any other business within the city licensed to sell/distribute food, beverages, or alcoholic beverages.

Low volume shall mean sound played at a level such that a person outside of the property line of the source of the sound, speaking in a normal tone of voice, is plainly audible and can be heard clearly and understandably by another person standing a maximum of thirty-six inches (36") away from the person speaking, without the aid of a listening device.

Momentarily shall mean a very short time equaling less than 30 seconds.

Noise shall mean any sound or vibration which may disturb or annoy reasonable persons of normal sensitivities; or causes, or tends to cause, an adverse effect on the public health and welfare; or endangers or injures people; or endangers or injures personal or real property.

Outdoor gathering area shall mean the area outside the confines of an enclosed building, and within the property line of the premises, designated for a person or persons to congregate. (e.g., patio, lanai, porch, terrace, veranda, sundeck, deck, courtyard, balcony, etc.)

Outdoor restaurant or bar shall mean any restaurant or bar, or portion thereof, which exists outside of the permanent exterior walls of the principal building(s) on a lot and has, in place, tables and chairs set up to accommodate patrons for seating, during all hours of operation. This definition includes any deck or other area constructed and/or utilized on the roof of a structure.

Person is any person, person's firm, association, copartnership, joint venture, corporation or any entity public or private in nature.

Plainly Audible shall mean any sound that can be heard clearly by a person using his or her unaided hearing faculties. When music is involved, the detection of rhythmic bass tones shall be considered to be plainly audible sound.

Previously Issued Outside Sound Amplification Permits defines businesses holding a valid Outside Sound Amplification Permit as of August 1st, 2016, and shall be permitted to be subject to the provisions of Ordinance No. 2002-7834 voted into law on June 3rd, 2002.

Property line of the premises shall mean an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.

All references to time in this chapter shall be the current legal time in the City of Jacksonville Beach.

All technical definitions are in accordance with American Standard S1.1-1960 entitled, "Acoustical Terminology."

(b) Low Volume Outdoor Amplified and Acoustic Sound permits.

(1) *Permit required.* Any person or business owning or operating a licensed establishment as defined in Section 18-7(a) that is located in the City of Jacksonville Beach, and which provides for low volume outdoor acoustic or amplified sound, shall possess a Low Volume Outdoor Amplified and Acoustic Sound Permit. This permit authorizes licensed establishments to provide outdoor amplified and acoustic entertainment to originate from within the property line of a licensed business, to utilize outdoor sound amplification equipment, and to otherwise permit the generation of amplified sound in unenclosed parts of the licensed premises.

(2) *Exemptions.*

- a. Indoor emergency signaling devices alerting an emergency shall not be deemed amplified or acoustic sound.
- b. An exterior burglar alarm shall not be deemed amplified and acoustic sound.

(3) *Standards applicable to indoor entertainment sound.*

- a. Except as otherwise permitted in this section, no licensed establishment in the City of Jacksonville Beach shall convey any entertainment sound, originating from within the licensed establishment's enclosed building, to the outside confines of the enclosed building, including any outdoor gathering areas.
- b. No licensed establishment shall be in violation of the noise restrictions in Section 18-4, *Noises prohibited.*
- c. Amplified and acoustic entertainment sound originating within the enclosed building housing the licensed establishment shall not be conveyed outside the building by any means, including but not limited to open windows, open doors

except entrance doors when opened momentarily, as needed for ingress and egress of persons, or any other means which conveys or facilitates amplified music from inside the confines of the building to the outside of the building, unless such sound is low volume, as defined in section 18-7(a).

(4) *Standards applicable to outdoor entertainment sound.*

- a. Any licensed establishment providing outdoor amplified or acoustic sound, including background music, must possess a valid Outdoor Amplified and Acoustic Sound Permit.
- b. Licensed establishments holding a Low Volume Outdoor Amplified and Acoustic Sound Permit shall not generate any sound within or from their outdoor dining area that exceeds a level such that a person outside of the property line of the originating premises and speaking in a normal tone of voice is not plainly audible, and understood, over this sound by another person standing a maximum of thirty-six inches (36") away from the person speaking.
- c. Outdoor amplified and acoustic sound shall be limited to sound producing devices such as low volume amplified sound, low volume acoustic, low volume orchestral instrument, or low volume stringed instruments. Drums, drum machines, and sub-woofer bass speakers are prohibited.
- d. Outdoor disc jockeys and amplified bands are strictly prohibited, unless specifically allowed in writing as part of a permit issued pursuant to Section 4-5 *Temporary extension of licensed premises* of Chapter 4 *Alcoholic beverages*.
- e. All sound must originate within the property line of the licensed establishment which holds a Low Volume Outdoor Amplified and Acoustic Sound Permit.
- f. Any sound originating within the enclosed building of a licensed establishment shall not be conveyed to the outdoor dining area unless that music is electronically channeled through the low volume speakers, and shall not generate any sound that exceeds a level such that a person outside the property line of the originating premises and speaking in a normal tone of voice is not plainly audible, and understood over this sound by another person standing a maximum of thirty-six inches (36") away from the person speaking.
- g. Operation of any amplified and acoustic sound between the hours of 10:00 p.m. and 8:00 a.m. is prohibited.
- h. Removing and/or resituating outdoor seating and tables as permitted in this chapter (18 Noise), while generating low volume outdoor amplified and acoustic sound, is prohibited.
- i. *Previously Issued Outside Sound Amplification Permits.* Beginning on August 1, 2002, persons or businesses owning or operating an outdoor restaurant, bar,

or any other establishment utilizing outdoor sound amplification equipment; and is otherwise permitted to generate amplified sound or noise in unenclosed parts of a premise, is required to possess a valid Previously Issued Outside Sound Amplification Permit.

(5) *Renewal for Previously Issued Outside Sound Amplification Permit.*

- a. Renewal for a Previously Issued Outside Sound Amplification Permits shall be made to the city clerk, on forms provided for that purpose. A fee, in an amount set by resolution of the city council and payable upon issuance, shall be charged for the outside sound amplification permit.
- b. Persons or businesses possessing a previously issued Outside Sound Amplification Permit shall file with the city, a sketch plan showing the proposed location and orientation of the equipment to be used, the street address and specific location at that address for the proposed use, the hours of operation of the equipment, a valid business tax receipt for licensed establishment, verification of compliance by licensed establishment with city zoning, code regulations, certification from the applicant that the equipment will be monitored to ensure that it is operated within the decibel levels permitted, and The name and street address where notices related to this section are to be mailed.
- c. For outdoor restaurants, bars or other establishments adjacent to a public right-of-way, public easement, public property, or public or private body of water other than the Atlantic Ocean, the amplification devices shall be directed away from any adjacent public right-of-way, public easement, public property, or public or private body of water other than the Atlantic Ocean; and otherwise operated in accordance with this chapter.
- d. Any person or business owning or operating an outdoor restaurant, bar, or other establishment located within two thousand (2,000) feet of the centerline of the Atlantic Intracoastal Waterway, said centerline being the western corporate limit of the City of Jacksonville Beach; as measured in a straight and continuous line from any point on or at the property line of such restaurant, bar, or other establishment, to the nearest point of the centerline of the Atlantic Intracoastal Waterway, may make application for an outdoor sound amplification permit. If such permit is granted by the City of Jacksonville Beach, the person or business is permitted to generate amplified sound or noise in unenclosed parts of a premise up to, but not to exceed, a maximum decibel level of 40 dB(A). The maximum decibel level established in this section applies only to outdoor restaurants, bars, or other establishments located within two thousand (2,000) feet of the centerline of the Atlantic Intracoastal Waterway, as defined above. All other outdoor restaurants, bars, or other establishments throughout the City of Jacksonville Beach must meet the requirements for maximum noise levels set forth in section 18-3(d)(1); Table 1.

- e. No permit shall be valid for the operation of any outside sound amplification equipment between the hours of 10:00 p.m. and 10:00 a.m. the following day.
- f. A permit shall be effective for a one-year period beginning on October 1st of each year, and is renewable for additional one-year periods upon reapplication and payment of the annual fee.
- g. *Permit not transferrable.* Any change in the ownership, name, and/or location of a licensed establishment with a valid Previously Issued Outside Sound Amplified Permit, as described in this section, shall cause the permit to be immediately invalid, and will only be issued as new Low Volume Outdoor Amplified and Acoustic Sound Permit.

(6) *Application for a Low Volume Outdoor Amplified and Acoustic Sound Permit.*

- a. An application for a low volume outdoor amplified and acoustic sound permit shall be made to the city clerk, on forms provided for that purpose. A fee, in an amount set by resolution of the city council and payable upon issuance, shall be charged for the outside sound amplification permit. The permit shall be issued within thirty (30) days of receipt of a complete application.
- b. *Minimum information required.* Any licensed establishment wishing to produce low volume outdoor amplified and acoustic sound shall complete an application form provided by the city. An annual fee, in an amount set by resolution of the city council and payable upon issuance, shall be charged for the permit. The application form shall include, but not be limited to, the following information:
 - i. Name and street address of the owner of the licensed establishment;
 - ii. Valid business tax receipt for licensed establishment;
 - iii. The hours of operation of the licensed establishment and a listing of the hours of operation of the entertainment sound equipment proposed to be used under the Outdoor Amplified and Acoustic Sound Permit, if approved;
 - iv. Verification of compliance by licensed establishment with city zoning and code regulations;
 - v. Specific type of state alcoholic beverage license held by the licensed establishment, if applicable;

- vi. A sketch plan of the proposed location and orientation of the equipment to be used, the proposed orientation of outdoor seating and tables, and including a certification signed by the applicant that the equipment will be monitored to ensure that it is operated within the sound levels permitted; and
- vii. The name and street address where notices related to this section are to be mailed.

The city clerk shall review the application and, if the application is complete, and the licensed establishment is in compliance with the Code of Ordinances, a permit shall be issued allowing low volume outdoor amplified and acoustic sound. A Low Volume Outdoor Amplified and Acoustic Sound Permit is issued by the city clerk. The permit shall contain conditions and limitations as listed in this ordinance including, but not limited to, hours of operation.

- (7) *Permit not transferrable.* Any change in the ownership of a licensed establishment after the issuance of the permit shall cause the permit to be immediately invalid and cause the new owner to reapply for the permit. The city shall be notified immediately, and the licensed establishment shall apply for a new permit if a transfer of ownership of the licensed establishment has occurred. Until such time as the new owner of the licensed establishment makes application for a new permit and is approved for the permit, the privilege of low volume amplified and acoustic sound shall be suspended.
- (8) *Renewal.* Such permit shall be renewed by the city annually on or before the ~~31th~~ 30th day of ~~December~~ September, provided that none of the following has occurred:
 - a. The permit has been suspended by the special magistrate and the conditions of the suspension have not been met;
 - b. A transfer of ownership of the licensed establishment has occurred, and this information was not provided to the city; or
 - c. A change in location of the licensed establishment has occurred, and this information was not provided to the city.
- ~~(9) *Expiration (“Sunset”) date.* Section 18-7(6), Low Volume Outdoor Amplified and Acoustic Sound Permit, shall expire on June 5, 2018, unless the city council of the City of Jacksonville Beach amends this section by extending the expiration or repealing this paragraph in its entirety.~~

~~(10~~ 9) *Notice of violation, hearing, and penalties.*

- a. Low Volume Outdoor amplified sound is a privilege.* The ability of a licensed establishment to generate outdoor amplified and acoustic sound, during the licensed establishment's hours of operation, on any day of the week is hereby declared to be and is a privilege subject to suspension, and no person may reasonably rely upon a continuation of that privilege. As a condition of the continuation of the privilege, licensed establishments are required to take all necessary steps to minimize the sound level originating from the licensed establishment. The following are representative, but not all-inclusive, of activities that may result in suspension of the privilege of amplified and acoustic sound:
- i. Violations of any provisions of Chapter 18 of the City of Jacksonville Beach Code of Ordinances, relating to noise and sound limitations;
 - ii. Failure to obtain a Low Volume Outdoor Amplified and Acoustic Sound Permit or failure to renew the permit as required; or
 - iii. Failure to renew a Previously Issued Outside Sound Amplification Permit as required.
- b. Action by city manager.* The Previously Issued Outside Sound Amplification Permit and Outdoor Amplified and Acoustic Sound Permit can be revoked at any time by the city manager or his/her designee if the operation fails to follow the terms of the permit or for a violation of any city ordinance. The city manager's or his/her designee revocation of a permit may be appealed to the special magistrate.
- c. Notice of violations, hearings, and penalties.*
- i. *Finding of violation.* In order to invoke the enforcement provisions of this section, a violation must be verified and documented by a police officer or code enforcement officer. A violation by a licensed establishment of any section of this ordinance shall result in a written notice of violation, issued by a police officer. The notice of violation shall be served by hand delivery or certified mail to the owner, proprietor, manager, or highest-ranking employee then on the premises of the licensed establishment. Issuance of a notice of violation of this section shall not prevent the filing of charges against the licensed establishment or any person for any other violation of the Code of Ordinances or state statutes.

- ii. *Jurisdiction of the special magistrate.* A notice of violation shall be taken before the city's special magistrate for consideration of suspension of the licensed establishment's Previously Issued Outside Sound Amplification Permit and Outdoor Amplified and Acoustic Sound Permit. The special magistrate shall exercise jurisdiction over such matters as set forth in Article VI, Section 2-170 of the Code of Ordinances of the City of Jacksonville Beach.

- iii. *Action by the special magistrate.* Upon completion of the hearing, the special magistrate shall deliver a ruling either that no action shall be taken against the licensed establishment's Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit, or that the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit shall be suspended. A suspension of the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit for a first finding by the special magistrate of a violation shall be not less than thirty (30) days nor more than ninety (90) days. A second and any subsequent finding by the special magistrate of a violation of the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit within one year (three hundred sixty-five (365) days) of the date of completion of the most recent suspension period shall result in a suspension of not less than ninety (90) days nor more than one hundred eighty (180) days. In addition to any suspension of the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit, the special magistrate may issue a fine of not more than five hundred dollars (\$500.00) per violation of this section. The special magistrate shall base his/her ruling upon substantial, competent evidence presented that supports a finding of non-compliance with this section. The special magistrate's written order of suspension of the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit shall state the effective date of the suspension and shall give the licensed establishment ten (10) calendar days of the notice of suspension.

- iv. *Failure of license holder to appear.* If a licensed establishment served with a notice of violation fails to appear at the hearing after having received proper notice, the special magistrate shall take testimony from city staff, and other relevant testimony, as available, and shall deliver a ruling either that no action shall be taken against the licensed establishment's Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit, or that the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Outdoor Acoustic Sound Permit shall be suspended for a period of time as set forth in this section. A ruling that the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit be suspended shall take ef-

fect on the tenth calendar day after the order is issued. The enforcement of such order shall be stayed if the licensed establishment files a request for a rehearing with the city clerk's office before the date the order is scheduled to take effect. In such case, the licensed establishment shall be rescheduled for a hearing before the special magistrate. At that hearing, the special magistrate shall take testimony from the licensed establishment, and other relevant testimony, as available, and shall deliver a ruling upholding the previous order suspending the Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit, amending the order suspending the Previously Issued Outside Sound Amplification Permit or Low Volume Outdoor Amplified and Acoustic Sound Permit, or rescinding the order suspending the Previously Issued Outside Sound Amplification Permit or Low Volume Outdoor Amplified and Acoustic Sound Permit. If the special magistrate upholds a suspension of the Previously Issued Outside Sound Amplification Permit or Low Volume Outdoor Amplified and Acoustic Sound Permit, such suspension shall take effect ten calendar days after the ruling is issued.

- v. *Modification of ownership status to avoid suspension.* Any licensed establishment that has had a Previously Issued Outside Sound Amplification Permit or Outdoor Amplified and Acoustic Sound Permit suspended cannot avoid the consequences of the special magistrate's action by changing its business name or corporate status.

- vi. *Alternative enforcement procedures.* The enforcement procedures contained herein are alternative procedures, and the city reserves the right to arrest, prosecute, or take action utilizing any other enforcement procedures authorized by law.

Sec. 18-8. – Severability.

Each separate provision of chapter 18 and the ordinances herein shall be deemed to be severable. If any provision, word or section within this chapter or ordinances herein is deemed unconstitutional or otherwise invalid, such determination shall not affect the validity of any other provisions, section or word of this chapter or ordinances.

SECTION 2. That all ordinances or parts of ordinances in conflict with this ordinance are, to the extent that the same may conflict, hereby repealed.

SECTION 3. This ordinance shall take effect upon its adoption in accordance with the law.

AUTHENTICATED IN OPEN MEETING THIS 16 DAY OF April, A.D. 2018.



William C. Latham, MAYOR



Laurie Scott, CITY CLERK