



Legislation Text

File #: 110672., **Version:** 1

REGULATION OF NOISE (B)

Ordinance No. 110672

An ordinance of the City of Gainesville, Florida, amending Chapter 15 of the Code of Ordinances of the City of Gainesville relating to the regulation of noise; amending Sec. 15-3, Prohibited acts, to provide identical noise restrictions for commercial and noncommercial amplified sounds; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

The City Commission adopt the proposed ordinance.

Recently, the Fifth District Court of Appeal held that Florida Statute Section 316.3045, a state law regulating sounds from motor vehicles, was unconstitutionally overbroad as a content-based restriction on free expression. *Montgomery v. State*, 2011 WL 4102292 *8 (Fla. 3d DCA 2011). In particular, the Court took issue with the content-based restrictions in Section 316.3045 which exempted sounds from the law's prohibitions if they came from motor vehicles used for commercial or political purposes, but prohibited other types of sounds from motor vehicles, including classical music and religious programming. Because the state failed to show that these content-based restrictions served a compelling state interest or were narrowly drawn to achieve those interests, the court held that the statute was unconstitutional under the First Amendment. *Id.* at *7-8. The *Montgomery* court's holding was consistent with *State v. Catalano*, 2011 WL 1801204 (Fla. 2d DCA 2011), in which the Second District Court of Appeal also found Section 316.3045 to be an unconstitutional content-based restriction of free expression.

Based on a recent review of the City of Gainesville's noise ordinance and in light of this recent case law, it appears that the City treats some forms of noncommercial speech better than commercial speech under its noise ordinance. Because of the distinction in the City's ordinance between commercial and noncommercial speech, a court may find that the ordinance contains unconstitutional content-based provisions aimed at commercial expression. Therefore, it is recommended that the City Commission adopt the proposed ordinance which amends Sections 15-3(d)(3) and (e)(7) of the City of Gainesville Code of Ordinances.

CITY ATTORNEY MEMORANDUM

This ordinance requires two hearings. Should this ordinance pass on first reading, second and final reading will be held on July 19, 2012.