

AN ACT TO BE ENTITLED

AN ORDINANCE BY THE PASCO COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE PASCO COUNTY CODE OF ORDINANCES, SECTION 66-97, TO ADD A SUBSECTION PROHIBITING THE USE OF SUDDEN NOISE DEVICES, KNOWN AND MARKETED AS AIR CANNONS OR PROPANE CANNONS; PROVIDING FOR APPLICABILITY, REPEALER, SEVERABILITY, INCLUSION INTO THE CODE, MODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Pasco County Board of County Commissioners and the Pasco County Citizens Ordinance Review Committee has held public hearings and obtained and considered evidence bearing on the relative merits of the use of sudden sound devices, commonly known and marketed as propane cannons or air cannons as an alternative method of pest control against predator birds by those engaged in crop production/farming; and

WHEREAS, the cannons are sound devices powered by propane, and can be adjusted or set to produce multiple blasts per minute, and left to run automatically without an operator near the device; and

WHEREAS, local blueberry farmers began using these devices in the past 4 growing seasons as a method of bird control, and multiple growers used the cannons for up to 9 weeks from sunrise to sunset during the 2007 growing season in 2007; and

WHEREAS, numerous citizens have complained of the noise and petitioned the Board of County Commissioners and individual commissioners to prohibit the use of the cannons, and

WHEREAS, citizens complain that because of the cannons they are unable to sit outside or open their windows due to the noise, they have suffered anxiety and fear, and their pets are disturbed; and

WHEREAS, the dBA reading of the cannon blasts was measured by Code Compliance officers at the property line of 3 different farms, and the readings were measured to be consistently over 85 dBA and as high as 97 dBA, and literature states that the cannon fire is very loud, from 115 to 130 decibels; and

WHEREAS, literature suggests that hearing damage and/or personal injury may occur at exposure to noises of 85 dBA and/or about 120 decibels; and

WHEREAS, the Pasco County Board of County Commissioners has found that, within the distance presently existing between certain blueberry farms and established private residences, the sound of such sound devices is persistent and inescapable and is an unreasonable annoyance and disturbance of the peace and emotional and psychological health of the community; and

WHEREAS, the county's current noise ordinance prohibits daytime commercial noise exceeding 60 dBA and industrial noise exceeding 66 dBA (55 dBA at night and on Sundays) measured at the nearest closest adjacent residentially-zoned property line; and

WHEREAS, the county's current noise ordinance limits the sound level of certain in residential zones, including air conditioning units (may not exceed 60 dBA measured at the nearest adjacent property line), and stereo/television noise (may not exceed 66 dBA during the daytime measured at the property line of the noise source); and

WHEREAS, anecdotal evidence shows that predator birds can become "used to" the blasts, reducing their effectiveness as a method of crop protection; and

WHEREAS, the use of such devices as part of soil-based crop production activity is not one regulated through an implemented best management practice or interim measure developed by the Department of Environmental Protection, the Department of Agriculture and

Consumer Services or any water management district and adopted under Chapter 120 of the Florida Statutes as part of a statewide or regional program; and

WHEREAS, crop production operations in this County have other non-obtrusive, less-intrusive, less-annoying means to combat the problem of pest birds destructive to their operations; and

WHEREAS, Pasco County Board of County Commissioners has balanced the interests of agricultural operations and residential use and found that it is in the best interest of the public health, safety, comfort, peace, tranquility and general welfare that the use of such sound devices be strictly regulated or prohibited;

WHEREAS, the cannons have reportedly already been in use in January 2008, the Pasco County Board of County Commissioners finds that it is in the public's best interest to make this prohibition immediately applicable and the pending ordinance doctrine should be applied; and

WHEREAS, the Pasco County Board of County Commissioners finds that the ordinance is consistent with FS Chapter 163 and the Pasco County Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Pasco County, Florida, as follows:

Section 1. The Pasco County Code of Ordinances Section 66-97, is hereby amended as follows:

66-97. Specific Noises Prohibited.

The following noises are prohibited under this article:

- (8) Use of sudden noise devices, known and marketed as Air Cannons or Propane Cannons, for any use, including that of frightening birds from agronomic operations. The following parcels are exempt from this prohibition:
- a. A parcel with the future land use classifications of AG (Agricultural).
 - b. A parcel with the future land use classification of AG-R (Agricultural/Rural).
 - c. A parcel where a person is using such a device as part of a farm operation as defined in FS 823.14, that has been in operation for 1 year or more since its established date of operation and which was not a nuisance at the time of its established date of operation if the farm operation conforms to generally accepted agricultural and management practices, but the farm operation may not become more excessive with regard to noise where the existing farm operation is adjacent to an established homestead or business on March 15, 1982.
 - d. A parcel where a person is using such a device as part of a farm operation as defined in FS 823.14, where the device is being used to comply with Best Management Practices adopted by local, state, or federal agencies if such farm has been in operation for 1 year or more since its established date of operation and if it was not a nuisance at the time of its established date of operation, but the farm operation may not become more excessive with regard to noise where the existing farm operation is adjacent to an established homestead or business on March 15, 1982.
 - e. A parcel where a person is using such a device as part of a farm operation as defined in FS 823.14 on land classified as agricultural land pursuant to FS 193.461, where such activity is regulated through implemented best-management practices or interim measures developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or water management districts and adopted under chapter 120 as part of a statewide or regional program; or if such activity is expressly regulated by the United States Department of Agriculture, the United States Army Corps of Engineers, or the United States Environmental Protection Agency, but the farm operation may not become more excessive with regard to noise where the existing farm operation is adjacent to an established homestead or business on March 15, 1982.
 - f. A parcel where a person is using such a device between sunrise and sunset and the sound of the device does not exceed 66 dBA when measured at the property line of the noise source where it adjoins residentially-zoned property (or if there is no adjacent residentially-zoned property, then the sound may not exceed 66 dBA

when measured at the property line of a residentially-zoned property that does not adjoin the property from which the noise is emanating).

Section 2. APPLICABILITY.

For purposes of jurisdictional applicability, this Ordinance shall apply in all unincorporated areas of the county. This Ordinance shall apply in a municipality within Pasco County only if the municipality expressly adopts this ordinance and repeals all ordinances inconsistent with these provisions. This Ordinance shall apply as of 12:00 p.m. on February 12, 2008, pursuant to application of the pending ordinance doctrine. Any changes made to the ordinance upon adoption shall be immediately effective. In the alternative, a Court should interpret the Board's intent to have the ordinance become applicable no later than the date of filing with the Secretary of State, but that the Board intends applicability on the earliest legally-effective date.

Section 3. REPEALER.

Any and all ordinances in conflict herewith are hereby repealed to the extent of any conflict.

Section 4. SEVERABILITY.

It is declared to be the intent of the Board of County Commissioners of Pasco County, Florida, that if any section, subsection, sentence, clause, or provision of this ordinance is held invalid, the remainder of the ordinance shall be construed as not having contained the said section, subsection, sentence, clause, or provision and shall not be affected by such holding. It is further the intent of the Board that if this ordinance is held invalid with respect to a specific use of land and/or a specific property (i.e., the ordinance is successfully challenged on an "as applied" basis), the ordinance shall remain in effect as to other uses and/or properties where legally appropriate.

Section 5. INCLUSION INTO THE CODE.

It is the intent of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Pasco County Code of Ordinances, and that the sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

Section 6. MODIFICATION.

It is the intent of the Board of County Commissioners that the provisions of this ordinance may be modified as a result of considerations that may arise during public hearings. Such modifications shall be incorporated into the final version of the ordinance adopted by the Board of County Commissioners and filed by the Clerk to the Board of County Commissioners.

Section 7. EFFECTIVE DATE.

A certified copy of this ordinance shall be filed with the Department of State by the Clerk to the Board of County Commissioners within ten (10) days after adoption of this ordinance, and this ordinance shall take effect upon filing with the Department of State.

ADOPTED this _____ day of _____, 2008.

(SEAL)

BOARD OF COUNTY COMMISSIONERS
OF PASCO COUNTY, FLORIDA

ATTEST:

JED PITTMAN, CLERK

THEODORE SCHRADER, CHAIRMAN