

1. Discussion Objective:

Work Session Date: December 2, 2013

Determine best course of action concerning the Town's noise regulations. Lee County Sheriff is not enforcing the current ordinance due to constitutional issues. Among issues to be discussed is whether to amend current ordinance to fix the problematic provisions, whether to retain a sound expert to assist in evaluating and determining appropriate decibel levels, and possible coordination with Lee County and Bonita Springs since those jurisdictions also have ordinances that the Sheriff is not currently enforcing.

2. Submitter of Information:

- ☐ Council
- ☐ Town Staff
- ☒ Town Attorney

3. Estimated Time for this item:

30 minutes

5. Background: The Town's current noise ordinance is not being enforced by the Sheriff due to certain provisions that are contradictory and others that are subject to challenged based on the recent Florida Supreme Court decision in State v. Catalano. The Sheriff is still able to cite for violations that are determined to violate the state "breach of peace" statute. The Lee County and City of Bonita Springs Noise Ordinances suffer from the same infirmities as the Town's ordinance, so it may be beneficial to consider coordinating with those jurisdictions to develop one uniform enforceable ordinance that the Lee County Sheriff will be familiar with and will be able to enforce uniformly in all three jurisdictions.

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
<i>Jerry Steward</i>						

TOWN OF FORT MYERS BEACH
ORDINANCE NO. 96-24

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH
FLORIDA, TO BE KNOWN AS THE TOWN OF FORT MYERS
BEACH NOISE CONTROL ORDINANCE PROVIDING
AUTHORITY; TITLE AND CITATION; DEFINITIONS;
PROHIBITED ACTS; SOUND LEVELS BY RECEIVING
LAND USE; EXCEPTIONS; WAIVERS; ENFORCEMENT;
PENALTIES; CIVIL REMEDIES; SEVERABILITY;
REPEALING CLAUSE AND EFFECTIVE DATE

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

SECTION ONE: Authority

This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapter 166, Florida Statutes, and other applicable provisions of law.

SECTION TWO: Title and Citation

This ordinance shall be known and cited as the "Town of Fort Myers Beach Noise Control Ordinance"

SECTION THREE: Definitions

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular and words in the singular include the plural. The words "shall" and "will" are mandatory and not discretionary.

A. A-Weighted Level (dBA) - The total broad band sound level of the noise spectrum as measured using the "A-weighted network" of a sound level meter. The unit of measurement is the dBA. Sound level meter settings shall be for slow response.

B. Ambient Noise - The all encompassing noise associated with a give environment, being usually a composite of sound from many sources near and far.

C. Continuous Noise - A noise which remains essentially constant in level during the period of observation.

D. Decibel - (dB) - A division of a logarithmic scale used to express the ratio of two like quantities proportional to power or energy. The ratio is expressed in decibels by multiplying its common logarithm by 10.

E. Emergency- An occurrence or set of circumstances involving actual or imminent physical trauma or property damage threatened or caused by an emergency.

F. Emergency Work - Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

G. Impulsive Sound- A sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts, and the discharge of firearms.

H. Intermittent Noise - A noise whose sound pressure level exceeds the ambient noise level at either regular or irregular intervals.

I. Noise - Any sound which annoys or disturbs humans or causes or tends to cause an adverse psychological effect on humans.

J. Noise Disturbance- One or a group of loud, harsh, non-harmonious sounds or vibrations that are unpleasant and irritating to the ear which is or may be harmful or injurious to the health or welfare of a reasonable person with normal sensitivities or unreasonably interferes with the enjoyment of life, property or outdoor recreation.

K. Noise Level - As referenced in this Ordinance, the noise level is the sound pressure level as measured in dBA unless otherwise specified. A measurement of noise must be at least 5dB above the ambient noise level.

L. Person- Any individual, natural person, public or private corporation, firm, association, joint venture, partnership, or any other entity whatsoever or any combination of such, jointly and severally.

M. Pure Tone - Any sound which can be distinctly heard as a single pitch or a set of single pitches. For the purposes of measurement, a Pure tone shall exist if the one-third octave band sound pressure level in the band with the tone exceeds arithmetic value of the sound pressure levels of the two contiguous one-third octave bands by 5dB for center frequencies of 500 Hz and above and by 8dB for center frequencies between 160 and 400 Hz and by 15dB for center frequencies less than or equal to 125 Hz.

N. Real Property Line - An imaginary line along the ground surface, and its vertical plane extension, which separates the real property owned, rented or leased by one person from that owned, rented or leased by another person, excluding intrabuilding real property divisions.

O. RMS Sound Pressure - means the square root of the time averaged

square of the sound pressure, denoted P_{rms} .

P. Sheriff's Department- the Lee County Sheriff's Office is the designated authority charged with administration and enforcement of this ordinance.

Q. Sound Level Meter - An instrument to measure the sound pressure level of relatively continuous and broadband noises. The sound level meter used to determine compliance with this Ordinance shall meet or exceed the requirements for type 2 sound level meter in accordance with ANSI Standard S1.4.

R. Sound Pressure Level - means 20 times the logarithm to the base 10 of the ratio of the RMS sound pressure to the reference pressure of 20 micropascals ($20 \times 10^{-6} \text{ N/m}^2$). The sound pressure level is denoted L_p or SPL and is expressed in decibels.

S. Residential Zone- Any geographic area designated for single or multi-family dwellings by the zoning authority having jurisdiction over such area.

T. Commercial Zone Any geographic area designated for commercial or professional activities by the zoning authority having jurisdiction over such area.

U. Industrial Zone Any geographic area designated for industrial or manufacturing activities by the zoning authority having jurisdiction over such area.

SECTION FOUR: Prohibited Acts

A. Noise Disturbance Prohibited.

No person shall make, continue, or cause to be made or continued any noise disturbance, in accordance with the terms set forth in this Ordinance.

SECTION FIVE: Sound Levels by Receiving Land Use

A. Maximum Permissible Sound Levels by Receiving Land Use

No person shall operate or cause to be operated any source of sound in such a manner as to create a sound level which exceeds the limits set forth for the receiving land use category in Table 1 when measured at or within the property line of the receiving land use.

Table 1.

SOUND LEVELS BY RECEIVING LAND USE		
Land Use Category	Time	Sound Level Limit dBA
Residential, Public Space, Agricultural or Institutional	7 a.m.-10 p.m.	66
	10 p.m.- 7 a.m.	55
Commercial or Business	7 a.m.-10 p.m.	72
	10 p.m.- 7 a.m.	65
Manufacturing or Industrial	At all times	75

B. Correction for Character of Sound

1. For any source of sound which emits a pure tone, the maximum sound level limits set forth in Table 1 shall be reduced by 5 dBA.
2. For any source of impulsive sound which is of short duration with an abrupt onset, the maximum sound level limits set forth in Table I shall be increased by 10 dBA from 7 a.m. to 10 p.m.

C. Specific Prohibitions-

In addition to the general prohibitions set out above in Table 1., the following specific acts are declared to be in violation of this Ordinance:

1. Multi-family Dwellings.

In the case of multi-family dwelling units, it shall be unlawful to create or permit to be created any noise that exceeds 50 dBA during the hours between 7 a.m. to 10 p.m., or 45 dBA during the hours between 10 p.m. and 7 a.m. daily, measured from a neighbor's dwelling within said multi-family dwelling unit.

2. Construction Noise.

No person shall operate or permit to be operated any power driven construction equipment without a muffler or other noise reduction device at least as effective as that recommended by the manufacturer or provided as original equipment. Construction equipment that must be operated near a residentially zoned area on a 24-hour per day basis (i.e., pumps, well tips, generators, etc.) shall be shielded by a barrier to reduce the noise during the hours of 6 p.m. to 7 a.m. unless the unshielded noise level is less than 55 dBA, measured at the closest adjacent residentially zoned property line.

3. Radios, television sets, exterior loudspeakers and similar devices.

In the case of any radio receiving set, musical instrument television, phonograph, drum, exterior loudspeaker, or other device for the production or reproduction of sound, it shall be unlawful to create or permit to be created any noise that exceeds:

(a) 60 dBA during the hours between 10 a.m. to 10 p.m. from the property line of the noise source.

(b) 55 dBA during the hours between 10 p.m. to 12 a.m. from the property line of the noise source.

D. Waivers. An exception to the noise levels listed in Table 1 may be permitted by the granting of a waiver, under circumstances in which the activity creating the noise is of such importance to the public welfare, health or safety that the activity cannot be shut down, even though its noise levels exceed those given in Table 1. Responsibility for the granting of such waivers shall lie with the Town Council, or its designee.

E. Nothing in this Ordinance shall prohibit the Sheriff's Department from charging persons responsible for acts which affect the peace and quiet of persons who may witness them for breach of the peace or disorderly conduct under Section 877.03, F.S. as may be amended from time to time.

SECTION SIX: Exceptions

The following shall be permitted:

A. An exception to the noise levels listed in Section Five, Table 1, shall be permitted in instances where an industry or commercial business had in prior years established its place of business in an area away from a residential development, or rezoning, now finds itself adjoining a residential zone. In instances of this latter nature, the noise ordinance pertaining to industrial-commercial boundaries shall govern; and the business shall not be required to meet those noise levels pertaining to residential boundaries.

B. The operation of warning or emergency signal devices such as sirens, horns, and bells when utilized for their intended purpose.

C. Noises resulting from equipment or operations incidental to the installation, maintenance or repair of facilities or restoration of services such as public utilities or other emergency activities in the public interest.

D. Ordinary noise created by the operation of refuse collection.

E. Any noise created by the operation of all Lee County Airports.

F. Noises consistent with cultural, sporting, historical or traditional observances, holidays and ceremonies, parades and concerts, provided that any event being operated for profit shall obtain a noise permit prior to such event, from the Town Council, or its designee, and any other applicable permit to operate such event as required by the Town.

G. Operation of equipment or conduct of activities normal to residential or agricultural communities such as lawn care, soil cultivation, domestic power tools, lawn mowers, maintenance of trees, hedges, gardens, saws and tractors, street sweepers, mosquito fogging, tree trimming and limb chipping and other normal community operations, between the hours of 7 a.m. to 10 p.m.

H. The lowing of cattle, clucking of fowl, the neighing of horses, the baying of hounds and other normal sounds of reasonably cared for domestic animals.

SECTION SEVEN: Waivers

Applications for a waiver for relief from the maximum allowable noise level limits designated in this Ordinance shall be made in writing. Such applications for waivers shall be made to the Town Council or its designee. Any waiver granted must be in writing and shall contain all conditions upon which said permit shall be effective. The Council may grant the waiver as applied for under the following conditions:

A. In granting a permit, the Council may prescribe any reasonable conditions or requirements they deem necessary to minimize adverse effects upon the community or the surrounding neighborhood.

B. Waivers from maximum allowable noise level limits may be granted for noises created within an industrial or commercial zone by operations which were in existence on the effective date of this Ordinance.

C. Waivers may be issued for no longer than 180 days, renewable by further application to the Town Council.

Any party feeling aggrieved by the denial of its application for waiver may appeal such denial to the Town Council, such appeal to be filed within 30 days from the date of denial.

SECTION EIGHT: Enforcement

If the Lee County Sheriff encounters a circumstance which reasonably indicates that a person is violating this Ordinance he is to administer a sound level pressure test with a sound level meter and ascertain whether a breach of the peace or a violation of

this Ordinance has occurred.

SECTION NINE: Penalties

Any person or persons, firm or corporation, or any agent thereof who violates any of the provisions of this Ordinance shall upon conviction be guilty of a second degree misdemeanor and subject to a fine not exceeding the sum of Five Hundred Dollars (\$500.00) or imprisonment in the County Jail for a period not exceeding sixty (60) days, or by both such fine and imprisonment. Each separate occurrence of a violation of this ordinance shall constitute a separate offense and shall be punishable as such hereunder.

SECTION TEN: Civil Remedies

In addition to the criminal penalties provided in this Ordinance, the Town Council is hereby authorized to institute any appropriate action or proceeding including suit for injunctive relief in order to prevent or abate violations of this Ordinance.

SECTION ELEVEN: Severability

If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way affect the validity of all other provisions of this ordinance.

SECTION TWELVE: Repealing Clause

All ordinances or parts thereof in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

SECTION THIRTEEN: Effective Date

This ordinance shall become effective September 30, 1996.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Murphy and seconded by Council Member Reynolds and, upon being put to a vote, the result was as follows:

Anita T. Cereceda
Ted FitzSimons
William (Rusty) Isler
Garr Reynolds
Ray Murphy

aye
aye
aye
aye
aye

DULY PASSED AND ENACTED this 30th day of September , 1996.

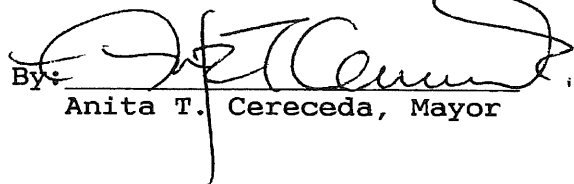
ATTEST:

TOWN OF FORT MYERS BEACH

By:


Marsha Segal-George, Town Clerk

By:


Anita T. Cereceda, Mayor

Approved as to form by:


Richard V.S. Roosa, Town Attorney