

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: 2011-033

1. **Requested Motion:** Set a public hearing date of April 18 at 6:30 pm for **Meeting Date:** Apr 4, 2011
Ordinance No 11-03, Limited Amendment, Noise Ordinance – Refuse Collection

Why the action is necessary: State statute requires that the title to any ordinance must be read at two public meetings before the ordinance can be adopted.

What the action accomplishes: Sets a public hearing to consider an amendment to the noise ordinance that will limit the time of day when refuse and recyclable collection from non-residential locations can take place within the Town.

2. **Agenda:**

☐ Consent
☒ Administrative

3. **Requirement/Purpose:**

☐ Resolution
☒ Ordinance
☐ Other

4. **Submitter of Information:**

☐ Council
☐ Town Staff
☒ Town Attorney

5. **Background:** The current noise ordinance provisions relating to noise created by the operation of refuse collection does not limit the time of day when such activities may take place. The Lee County solid waste franchise agreement for Veolia contains time limitations, but such limitations are only applicable to solid waste and recyclable collections by that franchisee. There are other companies that collect recyclables from commercial properties located in the Town that have been conducting their collection activities as early as 5:00 a.m. and there have been complaints from some of the neighboring residential properties about the loud noises produced by these activities during such an early hour. This ordinance amendment will limit all non-residential collection to between the hours of 6:30 a.m. and 6:30 p.m. Residential collection is already limited by the provisions of the County's solid waste franchise agreement.

6. **Alternative Action:** Do not schedule the public hearing.

7. **Management Recommendations:** Approve setting the public hearing.

8. **Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
<i>[Signature]</i> for T Stewart				<i>[Signature]</i> for W F Weigel		

9. **Council Action:**

☐ Approved ☐ Denied ☐ Deferred ☐ Other

ORDINANCE NO.11-03

AN ORDINANCE AMENDING CHAPTER 14, ARTICLE II, IN THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES, "NOISE CONTROL," AMENDING SECTION 14-22, "EXCEPTIONS," SUBSECTION (4), TO LIMIT THE EXCEPTION FOR ORDINARY NOISE CREATED BY THE OPERATION OF REFUSE AND RECYCLABLES COLLECTION FROM NON-RESIDENTIAL LOCATIONS SO THAT SUCH COLLECTION MAY ONLY OCCUR BETWEEN THE HOURS OF 6:30 A.M. AND 6:30 P.M.; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. Section 14-22 of the Town of Fort Myers Beach Code of Ordinances is hereby amended as follows:

Sec. 14-22. - Exceptions.

The following shall be permitted:

- (1) An exception to the noise levels listed in table 1 in section 14-21(a), 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.
- (2) The operation of warning or emergency signal devices such as sirens, horns, and bells when utilized for their intended purpose.
- (3) 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.
- (4) Ordinary noise created by the operation of refuse or recyclables collection, provided, however, that such collection from non-residential locations may only occur between the hours of 6:30 a.m. and 6:30 p.m.
- (5) Any noise created by the operation of all county airports.
- (6) 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.

- (7) 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 7:00 a.m. to 10:00 p.m.
- (8) 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 2. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application hereof.

Section 3. Effective Date. this Ordinance shall be effective immediately upon adoption.

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

Larry Kiker, Mayor
Bob Raymond, Vice Mayor
Joe Kosinski

Alan Mandel
Jo List

DULY PASSED AND ENACTED by the Council of the Town of Fort Myers Beach, Florida, this _____ day of _____, 2011.

ATTEST:

TOWN OF FORT MYERS BEACH

BY: _____
Michelle D. Mayher, Town Clerk

BY: _____
Larry Kiker, Mayor

Approved as to legal sufficiency by:

Fowler White Boggs, Town Attorney