

1. Requested Motion:

Meeting Date: February 21, 2012

Motion to approve a waiver for relief from the maximum allowable noise level limits in Section 14-21 of the Town Code of Ordinances.

Why the action is necessary:

The Town Noise Ordinance provides that waivers from the maximum allowable noise level limits can be granted by the Town Council.

What the action accomplishes:

Permits the event organizer to exceed the noise level limits under specified conditions.

2. Agenda:

- Consent
- Administrative
- Public Hearing

3. Requirement/Purpose:

- Resolution
- Ordinance
- Other

4. Submitter of Information:

- Council
- Town Staff - Public Works
- Town Attorney

5. Background:

Nervous Nellie's has had various special events in the past similar to the one proposed. The event would be held on March 17, 2012 from 11:00 a.m. – 10 p.m. to celebrate St. Patrick's Day. Multiple acts will be performing musical concerts on a stage set up on Snug Harbor property adjacent to the Town Fountain Area. Permission has been granted by the property owner of Snug Harbor to utilize his property for the event. The organizer has requested use of the Town's Right-Of-Way in the Fountain Area. Proper steps have been taken to fulfill the requirements of a Special Event Permit. An issue has arisen from complaints from neighboring Snug Harbor residents complaining about the noise generated from daily musical entertainment at Nervous Nellie's. The Lee County Sheriff's Office responded to multiple complaints and issued a warning for exceeding the decibel limits set by the Town's Noise Ordinance. The organizers of this event would like to request a waiver from the noise ordinance to allow the event to exceed the decibel limit. See attached Special Event Permit Application and copy of Noise Ordinance for further information.

6. Alternative:

Decline to approve a waiver.

7. Management Recommendations:

Approve the waiver.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

9. Council Action:

- Approved Denied Deferred Other

**Town of Fort Myers Beach
Special Event Application**



Describe event including times, dates, activities and general overview of event.

1ST ANNUAL ST. PATROCKS DAY MUSIC FESTIVAL
AT NERVOUS NELLIES

For special events requesting public assistance-define Public Purpose ORGANIZERS

REQUEST A NOISE PERMIT FOR THIS EVENT
TO EXCEED THE 72 DECEL LIMIT AS PER
TOWN NOISE ORDINANCE.

Date(s) and times of event	MARCH 17 TH 2012 11AM - 10PM
Name of event	1 ST ANNUAL ST. PATROCKS DAY MUSIC FEST
Address of event	1131 FIRST ST. FT MYERS BEACH FL 33931
Expected # of participants	500 - 800
Organization	NERVOUS NELLIES RESTAURANT
Organization address	1131 FIRST ST. FT. MYERS BEACH FL. 33931
Contact Person	Steve DeAngelis
Contact Phone #	239-822-1369
Fax #	239-463-1746
E-mail	stevied3701@yahoo.com
Request for Public Assistance	Yes _____ No <input checked="" type="checkbox"/>
Amount of Request (If applicable)	_____

This permit is subject to the applicant meeting all requirements contained in Fort Myers Beach ordinances #98-01 and #00-16 and compliance with all items in the special event application

FOR GROUPS REQUESTING FINANCIAL ASSISTANCE:

Four (4) copies of the application and all supporting documents must be submitted to the Finance Department no later than April 30th. The request will be considered for inclusion in the next FY budget (October-September).

Office Use Only:

Date Received:

By:

2/8/12
[Signature]

Amount Paid:

Cash/Check #:

\$ 35.00
7385

Applicant to Complete:

Company managing trash removal: Veolia

No. of dumpsters: 2 Type of dumpsters: 8yd

Who is responsible for clean-up and payment: Nervous Nellies

City right-of-way Parking Use: ~~Yes~~ Number of spaces: 2

Request to hang banner(s): Yes No
Road Closure: Yes No
Bridge Closure: Yes No

ORGANIZERS REQUEST A NOISE PERMIT TO EXCEED THE 72 DECIBEL THRESHOLD LIMIT AS PER THE TOWN'S NOISE ORDINANCE
Required Approvals

FMB Public Works: Tel (239)765-0202 Fax (239)765-0909

Public Works remarks: _____

FMB-Public Works approval: _____ Date: _____

Florida DEP: Jennie Cowart Tel (239)344-5627 Fax (850)412-0590
Pager 1-850-488-7708 email: Jennifer.cowart@dep.state.fl.us

Florida DEP remarks: _____

Florida DEP approval: _____ Date: _____

FORT MYERS BEACH FIRE DEPT
17891 San Carlos Blvd., Fort Myers Beach, FL 33931

Tel (239)590-4242
Fax (239)463-6761

Fire Guards: (how many?) CERT Benefit

Fee: _____

Flammable Vegetation: 0

First Aid Equipment: 0

Fire Extinguishing Equipment: See Guide lines

Special Arrangements: All electrical work must be

in compliance with NFPA 700. 100 Extension

Cords Attached to building / Running into windows doors allowed

L. M. ...
Print Name

[Signature]
Approval Signature

26/Jan/2013
Date

FMB Environment Science: Keith Laakkonen Tel (239)765-0202 Fax (239)765-0591

FMB Environmental Sciences remarks: _____

FMB approval: _____ Date: _____

Turtle Time Inc: Eve Haverfield Tel (239)481-5566 Fax (239)481-5397

Turtle Time remarks: _____

Turtle Time approval: _____ Date: _____

LEE COUNTY SHERIFF'S DEPT Tel (239)477-1830 Fax (239)432-0268
15650 Pine Ridge Road, Fort Myers, FL 33908

Parking: 0

Deputies (how many?): 0

Traffic Control: 0

Fees: 0

Special Arrangements: Call LCSO if assistance
is needed 477-1000 - call 911
for emergencies

Lt. M. Colino [Signature] 1-25-12
Print Name Approval Signature Date

KIRIC INVESTMENTS

1522 Park Road • Waynesboro, Virginia 22980 • (540) 943-3176 • FAX (540) 943-5539

January 20, 2012

To: The Town of Fort Myers Beach

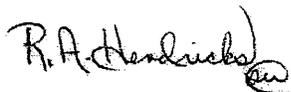
From: Richard Hendricks, CEO KIRIC Investments, Inc.

RE: Extension of premises of Nervous Nellies

Nervous Nellies, Inc. has our permission to use our entire parcel located on Fort Myers Beach as an extension of their premises for a St. Patrick's Day party to be held on Saturday, March 17, 2012.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "R. A. Hendricks". The signature is written in dark ink and includes a stylized flourish at the end.

Richard A. Hendricks, CEO

Herbore House

WALKWAY

OLD SNOOKER'S BLDG

WALKWAY

VENUE AREA

PERIODS PERMITS

PERMITS

DATE

FIRST STREET

PERIODS PERMITS

PAGE

FOUNDAID

GRASS AREA

STAGE

SIDEWALK

SQUARE WALKWAY CONDO

OUTDOOR PAUL

GAZERD

Town of Ft Myers Beach
Estero Blvd
Ft Myers Beach, Florida 33931

1/25/2012

Re; Nervous Nellie's CERT team Fundraiser

Located 1131 First Street, Ft. Myers Beach, FL
Please accept this letter as a description of the March 17th, 2012 Fundraising event. We will be utilizing the Nervous Nellie's Property on both sides of the Fountain/Park area during the hours of 11:00am and 10:00pm. We will have a Stage set up on the Nervous Nellie's Grass Area on the North side of the fountain for entertainment and request the use of the Town's Fountain/Park area for customer enjoyment and seating. We will serve Food, Coffees, Teas, and Soft Drinks, and Alcoholic beverages. Nervous Nellie's will secure the extension of premises permit from The Department of Alcohol, Tobacco, and Firearms. We expect 500-800 additional customers for this event.

The Nervous Nellie's Normal Parking Lot will be open as usual. Trash removal will remain the same as well utilizing our normal dumpsters.

We would like to have the use of the Electric Service next to the Gazebo. We paid the Fee for the last event and never had it opened the day of by mistake. There should be a credit due on this. Please advise... Thank you for your Kind time and consideration on this

matter and hope that we answered any questions.
Please contact this writer at 239-218-8695 cell or on
location at Nervous Nellie's....239-463-8077.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Rob DeGennaro', is written over the text 'Respectfully submitted,'. The signature is stylized and somewhat illegible.

Rob DeGennaro, President
Nervous Nellie's, Inc
1131 First Street
Ft Myers Beach, Florida 33931



NERVOUS NELLIES, INC.
1131 FIRST STREET
FORT MYERS BEACH, FL 33931
PH. (239) 463-8077

PAY TO THE ORDER OF

CAPITAL BANK
Fort Myers, Florida

FOR

DATE

2/6/2012

7385

63-1176670
64

\$ 35

DOLLARS

Security Features
Capital Bank

LOWE'S OF FT MYERS BEACH
Three Five
Rent Material

[Handwritten Signature]

MP

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

DBPR Form
ABT-6029
Revised 09/2010

NOTE – This form must be submitted as part of an application packet
If you have any questions or need assistance in completing this application, please contact the Department of Business and Professional Regulation or your local district office. Please submit your completed application to your local district office. This application may be submitted by mail, through appointment, or it can be dropped off. A District Office Address and Contact Information Sheet can be found on AB&T's page of the DBPR web site at the link provided below.

http://www.myflorida.com/dbpr/abt/district_offices/licensing.html

SECTION 1 - CHECK TRANSACTION REQUESTED	
Transaction Type:	
<input checked="" type="checkbox"/> Temporary Extension	<input type="checkbox"/> Amended Sketch
<input type="checkbox"/> Permanent Extension	

SECTION 2 - LICENSE INFORMATION			
Licensee (as listed on alcoholic beverage license)			
Business Name (D/B/A) NERVOUS NELLER INC.			
Location Address (Street) 1131 FIRST ST.			
City Ft. MYERS BEACH	County LEE	State FL	Zip Code 33931
Alcoholic Beverage License Number BEV 4605377	Series 4COP	Type	
Contact Person Rob De GENARO	Telephone Number 239 463 8077 ext.		
Email Address ISLAND Foodgroup@yahoo.com			
FOR TEMPORARY EXTENSIONS ONLY:			
Date(s) of Extension:			
3-17-12			

SECTION 3 - ZONING APPROVAL	
TO BE COMPLETED BY THE ZONING AUTHORITY GOVERNING YOUR BUSINESS LOCATION (This section only applies to a permanent or temporary extension of licensed premises)	
Are there outside areas which are contiguous to the premises which are to be part of the premises sought to be licensed?"	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
The above extension of the licensed premises as shown in the sketch <input checked="" type="checkbox"/> does comply or <input type="checkbox"/> does not comply with zoning requirements for the sale of alcoholic beverages pursuant to this application.	
Signed: <u>Walter J. Hugel</u>	Title: <u>CDD</u> Date: <u>2-2-12</u>

SECTION 5 - DESCRIPTION OF PREMISES TO BE LICENSED

Business Name (D/B/A)
 NERVOUS NELLIES INC.

Street Address
 1131 FIRST ST.

City F. MYERS BEACH 1	County LEE	State FL	Zip Code 33431
--------------------------	---------------	-------------	-------------------

- | | | | |
|----|--|-----------------------------|---|
| 1. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | Is the proposed premises movable or able to be moved? |
| 2. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | Is there any access through the premises to any area over which you do not have dominion and control? |
| 3. | Neatly draw a floor plan of the premises in ink, including sidewalks and other outside areas which are contiguous to the premises, walls, doors, counters, sales areas, storage areas, restrooms, bar locations and any other specific areas which are part of the premises sought to be licensed. A multi-story building where the entire building is to be licensed must show each floor plan. | | |

SEE ATTACHED DIAGRAM

HAEFELER
HALL

WALKWAY

OLD SASSONKLO'S BUILD

WALKWAY

GREENHOUSE

VERBODEN TOEGANG

PAVING

FIRST STREET

VERBODEN TOEGANG

PERC

Fountain

GAZEBO

GRASS AREA

OUTDOOR
PATIO

WV
2-2-12

SEWER

SNOW
LAPPEL
CONCRETE

Jeff Richard

From: Ciolino, Mike [MCiolino@sheriffleefl.org]
Sent: Tuesday, January 31, 2012 10:55 AM
To: Jeff Richard
Subject: FW: Nervous Nellies

When you get a chance call me.
850-6005

From: Schwing, George
Sent: Sunday, January 29, 2012 4:26 PM
To: Ciolino, Mike; Powell, Matt
Subject: Nervous Nellies

Lt.

I responded back to Nervous Nellies today in an attempt to meet with the owner Rob in reference to yesterdays load noise complaint, unfortunately Rob was not in. While there I took another reading this time they once again came in above the allowable 72db at 85db. Contact was made with the on duty manager Pamela J. Roan who was issued a warning ticket #00216 (FMB warning/citation book) Both Rich from Marina Village/Snug Harbor condos along with Nervous Nellies manager Pamela Roan were given copies of the most current town noise ordinance along with a copy being placed in the sound meter case. I assisted the manager utilizing our sound meter to bring the bands volume into compliance with the ordinance.

I placed copies of the town's most current ordinance in yours and the Captains mailboxes to review. In reading it and under section 14-21(c)(3) Specific Prohibitions it states that in the case of any musical instrument, drum, exterior loudspeaker or other device for the production or reproduction of sound that it shall be unlawful to create or permit to be created any noise that exceeds 60db between the hours of 10a-10p from the property line of the source, and no more than 55db between 10p-12midnight. I have always been under the understanding that we used the 72db and 65db thresholds but in reading the most current ordinance the db level may be lower for outdoor entertainment. I have attached a link to the town's ordinance on Municode. If possible could we forward it Hillmyer to get his interpretation as to what the maximum db level can be for a band or DJ playing outdoors thru a PA system can be?

http://library.municode.com/HTML/14562/level3/PTIICOOR_CH14EN_ARTIINOCO.html

Cpl. Schwing

IMPORTANT MESSAGE This message is intended for the use of the person or entity to whom it is addressed and may contain information that is privileged and confidential, the disclosure of which is governed by applicable law. If the reader of this email is not the intended recipient or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is STRICTLY PROHIBITED. If you have received this email by error, please notify us immediately and destroy the related message. This footnote also confirms that this email message has been swept for the presence of computer viruses, worms, hostile scripts and other email-borne network threats. PLEASE NOTE: Florida has a very broad public records law. Most written communications to or from government officials are public records available to the public and media upon request. Your email communications may be subject to public disclosure per Sec. 119 F.S.

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 Prms.

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 (20×10^{-6} N/m²). The sound pressure level is denoted Lp 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 of 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.

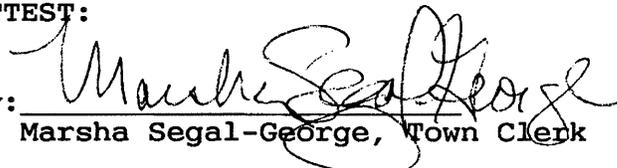
The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Murphy and seconded by Council Member Reynolds and, upon being put to a vote, the result was as follows:

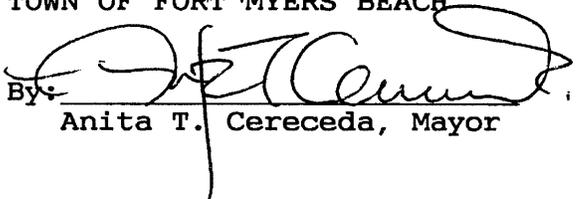
Anita T. Cereceda aye
Ted FitzSimons aye
William (Rusty) Isler aye
Garr Reynolds aye
Ray Murphy aye

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