

ORDINANCE NO. 19-01

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 14, ARTICLE 2, NOISE CONTROL; SHORT TITLE AND TERRITORIAL SCOPE; FINDINGS AND PURPOSE; DEFINITIONS; NOISE DISTURBANCE PROHIBITED; PROHIBITED ACTS; EXCEPTIONS; WAIVERS; ENFORCEMENT; PENALTIES; CIVIL REMEDIES; RULES AND REGULATIONS; CODIFICATION AND SCRIVENER'S ERRORS; CONFLICTS OF LAW, SEVERABILITY AND SUBSTITUTION CLAUSE; MODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council ("Council") is the governing body of the Town of Fort Myers Beach, a municipal corporation in the State of Florida ("Town"); and

WHEREAS Chapter 166, *Florida Statutes*, authorizes the Council, acting for the benefit of the Town, its residents and visitors, to adopt ordinances necessary for the exercise of its powers and to prescribe fines and penalties for the violation of said ordinances in accordance with general and local law; and

WHEREAS, the Council has determined a need to more effectively control and abate noise disturbances in the Town; and

WHEREAS, the purpose of this Ordinance is to amend the current regulations to provide a clear delineation of enforcement procedures and standards with concise guidelines for regulating noise disturbances within the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:¹

SECTION 1. AMENDMENTS:

That section Chapter 14, Article II Noise Control, Sections 14-19 thru 14-24 of the Code of Ordinances, Town of Fort Myers Beach, Florida, are hereby amended to read as follows:

Sec. 14-19 - Short Title and Territorial Scope.

^{1/} Additions to existing text are shown by underline, deletions are shown by ~~strikethrough~~, and text additions between first and second reading are shown by double underline.

This Article will be known and cited as the “Fort Myers Beach Noise Control Ordinance” and will be applicable throughout the corporate limits of the Town of Fort Myers Beach.

Sec. 14-20 - Findings and Purpose.

- (a) The Town of Fort Myers Beach finds excessive, loud and raucous noise degrades the environment of the Town to a degree that:
 - (1) Is harmful to the health, welfare, and safety of its inhabitants and visitors;
 - (2) Interferes with the comfortable enjoyment of life and property;
 - (3) Interferes with the well-being, tranquility, and privacy of the home; and
 - (4) Can cause and aggravate health problems.
- (a) Both effective control and the elimination of excessive, loud and raucous noise are essential to the health, safety and welfare of the Town’s residents and visitors, and to the conduct of normal pursuits of life, including, but not limited to, recreation, work, communication, and rest.
- (b) This Article is enacted to protect, preserve, and promote the health, safety, welfare, peace and quiet of the residents of through the reduction, control, and prevention of excessive, loud and raucous noises that unreasonably disturb, alarm, injure, or endanger the comfort, repose, health, peace, or safety of reasonable persons with normal sensitivities.
- (c) Nothing contained in this Article is intended to infringe upon the constitutionally protected rights guaranteed by Article I, Section 6 of the Florida Constitution and the First Amendment of the United States Constitution. This Article enacts narrowly drawn, content-neutral regulations that are to be interpreted so as to not unduly restrict constitutionally protected rights

Sec. 14-21 - Findings and Purpose.

The words and phrases used in this Article are defined as follows:

A-weighted level (dBA): The sound pressure level in decibels as measured using the A-weighting network on a sound level meter. The unit of measurement is the dBA. Sound level meter settings shall be set for slow response.

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

C-weighted level (dBC): The sound pressure levels in decibels as measured using the C-weighted network on a sound level meter. The unit of measurement is the dbC. Sound level meter settings shall be set for slow response.

Commercial use: Land used primarily for the sale of merchandise or goods, the performance of a service, or for office or clerical work.

Continuous noise: A noise which remains essentially constant in level during the period of observation.

Council: The Fort Myers Beach Town Council.

Decibel (dB): A division of a logarithmic scale used to express the ratio of two (2) like quantities proportional to power or energy. The ratio is expressed in decibels by multiplying its common logarithm by 10.

Emergency: An occurrence or set of circumstances involving actual, threatened or imminent physical trauma or property damage which necessitates immediate action.

Emergency work: Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency, including restoration work to return property to a safe condition following an emergency.

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 and drop forge impacts.

Noise: Any sound which annoys or disturbs humans or causes or tends to cause an adverse psychological effect on humans. "Noise" includes low frequency sounds caused by amplified bass music that can result in vibration of structures or persons.

Noise disturbance: One or a group of excessive, loud, harsh, raucous, harmonious or nonharmonious sounds or vibrations that unreasonably disturb, alarm, injure, harm or endanger the health or welfare of a reasonable person with normal sensitivities.

Noise level: As referenced in this chapter, the noise level is the sound pressure level as measured in dBA unless otherwise specified. A measurement of noise must be at least five (5) dB above the ambient noise level.

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.

Public space: Any real property or structure thereon normally accessible to the public which is owned or controlled by a governmental entity.

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 (2) contiguous one-third octave bands by five (5) dB for center frequencies of 500 Hz and above and by eight (8) dB for center frequencies between 160 and 400 Hz and by fifteen (15) dB for center frequencies less than or equal to 125 Hz.

Real property line: An imaginary line including its vertical extension which separates the real property owned, rented or leased by one person from that owned, rented or leased by another person, excluding intra-building real property divisions except as otherwise provided herein.

Receiving land: Land area neighboring or in the vicinity of a sound source and on or at which the sound emanating from the sound source is audible to the normal ear and/or felt in the form of vibration.

Residential use: Land use that is primarily for living and sleeping, parks, hospitals, schools, institutional, nursing homes or the individual plots within a mobile home park or any land use that is not commercial.

RMS sound pressure: The square root of the time averaged square of the sound pressure, denoted Prms.

Lee County Sheriff's Office or Town of Fort Myers Beach Code Enforcement Department: The designated authority authorities charged with administration and enforcement of the Fort Myers Beach Noise Control Ordinance.

Sound level: The weighted sound pressure level obtained by the use of a metering characteristic and weighting A, B, or C as specified in the American National Standards Institute specifications for sound level meters ANSI S1.4-1983, or successor publications. If weighting employed is not indicated, the A-weighting shall apply.

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 chapter shall meet or exceed the requirements for type 2 sound level meter in accordance with American National Standards Institute (ANSI) Standard S1.4-1983 or its successor publication.

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

Sound source: The location from which the impermissible sound level or noise disturbance is emanating.

Sec. 14-22 – 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 Article.

Sec. 14-23 - Prohibited Acts.

The occurrence of the conditions, acts or omissions as described in either subsection (a) or (b) of this section shall constitute a violation of this Article. Should a sound level measurement method be unavailable, inappropriate for a given set of circumstances, or unable to be taken by a sound level meter, subsection (a) of this section may be used to prove a violation so long as evidence exists sufficient to establish that the sound constitutes a noise disturbance pursuant to the standards provided in subsection (b) of this section. However, excessive noise is also defined as a violation when any sound which is audible to a Lee County Deputy Sheriff or Town of Fort Myers Beach code enforcement officer while standing or in a vehicle with engine off and windows rolled down in excess of 1,000 feet or more from the noise generating property's adjacent closest property line between the hours of 10:00 p.m. to 7:00 a.m.

(a) *Maximum permissible sound levels by receiving land.* 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 real property line of the receiving land or, at the discretion of the Officer, those limits set forth in the alternative Table 2 as measured from the property line of the noise source.

Table 1
SOUND LEVELS BY RECEIVING LAND USE

Land Use Category	Time	Sound Level Limit dBA
Residential or public space	7:00 a.m.—10:00 p.m.	66
	10:00 p.m.— 7:00 a.m.	55
Commercial or business	7:00 a.m.—10:00 p.m.	72
	10:00 p.m.— 7:00 a.m.	65

Table 2
ALTERNATIVE SOUND LEVELS

Land Use Category	Time	Sound Level Limit dBA
All land uses	7:00 a.m. to 10:00 p.m.	75
	10:00 p.m. to 7:00 a.m.	72

(1) *Correction for character of sound:*

- a. For any source of sound which emits a pure tone, the maximum sound level limits set forth in Table 1 or 2 shall be reduced by five (5) dBA.
- b. For any source of impulsive sound which is of short duration with an abrupt onset, the maximum sound level limits set forth in Table 1 or 2 shall be increased by ten (10) dBA from 7:00 a.m. to 10:00 p.m.
- c. *Alternate Weighting.* A C-weighted level (dBC) may be substituted for any sound level limit identified in this Article under an A-weighted level (dBA). Such substitution shall carry a plus five (5) dB adjustment (i.e. a 55 dBA limit shall be substituted with a 60 dBC limit).

(2) *Establishment of use.* In instances where a commercial use was established prior to and in an area away from a residential use and encroachment of the residential use has occurred resulting in the commercial use adjoining the residential use, the sound level limit for the receiving residential use will be that of the commercial use, whichever applicable, as set forth in Table 1 or 2 above. Establishment of the commercial uses' existence before residential use encroachment is an affirmative defense to a violation of this Article.

(3) *Specific restrictions.* In addition to the general limits set out above in Table 1 or 2, the following specific acts are declared to be in violation of this Article:

- a. *Multifamily dwellings.* In the case of multifamily dwelling units, it shall be unlawful to create or permit to be created any noise that exceeds fifty (50) dBA during the hours between 7:00 a.m. to 10:00 p.m. or forty-five (45) dBA during the hours between 10:00 p.m. and 7:00 a.m. daily, as measured from the receiving dwelling unit within such multifamily dwelling.
- b. *Construction or demolition 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 unless the sound level emitted by the equipment is less than the sound level limit for the applicable land use category set forth in Table 1 or 2 of this section, as measured from at or within the real property line of the receiving land.

1. The construction, erection, demolition, alteration, or repair of any building or structure, or any excavation, within or adjacent to any residential area, is prohibited before 7:00 a.m. or after 7:00 p.m. Monday through Saturday, and is prohibited at any time on Sundays or legal holidays.

2. Construction equipment that must be operated near a residential use on a 24-hour-per-day basis (i.e., pumps, well tips, generators, etc.) will be shielded by a barrier to reduce the noise during the hours of 6:00 p.m. to 7:00 a.m. unless the unshielded noise level is less than fifty-five (55) dBA, as measured from at or within the real property line of any residential receiving land.

3. This section does not apply to routine household maintenance and the use of domestic power tools in connection with such routine household maintenance.

4. This section also does not apply to work performed by a public service utility, or other contractor approved by the Town, to address or prevent a public emergency, including traffic control, is exempt from the provisions of this section.

c. Screeching of tires, and engine or jake braking.

1. The operation of any motor vehicle in such a way as to cause the tires thereof to screech, except where the same is necessarily caused in an emergency, as in an attempt by the operator to avoid an accident or the causing of damage or injury, shall be deemed a violation of this Article.

2. The operation of jake brake or engine brake as means of reducing speed or as a means of slowing or stopping along public rights-of-ways as to cause loud, explosive noise, shall be deemed a violation of this Article.

(4) *Sound level measurement standards.* The following standards must be followed in measuring sound levels.

a. *Calibration.* All sound level meters must be calibrated and serviced in accordance with the manufacturer's instructions.

b. *Sound level meter operation.* The sound level meter must be operated in accordance with the manufacturer's instructions.

c. *Measurement procedures.* The following procedure must be used to determine if a violation exists under this subsection:

1. The sound level meter must be located within the boundary of the receiving land when taking the measurement.
2. The sound level meter must be oriented toward the source of the sound making a direct line between the sound source and the sound level meter.
3. The sound level meter must be set for either the A-weighted or C-weighted network and slow response.
4. If possible, determine and record the ambient noise level during some point in the observation. The A-weighted or C-weighted ambient noise level, including wind effects and noises other than the sound source, must be at least 5 dbA lower than the sound level of the sound source for a violation of this Ordinance to exist.

(b) *Noise disturbance.* Notwithstanding any other provision herein, it shall be unlawful for any person to make, continue, cause, or permit any noise disturbance.

(1) *Standards.* The standards to be considered in determining whether a noise disturbance exists under this subsection include the following:

- a. The volume of the noise, whether it is loud or quiet.
- b. The intensity of the noise.
- c. Whether there is vibration associated with the noise.
- d. The nature of the noise, i.e. raucous, unruly, harsh, etc.
- e. The volume and intensity of the ambient noise, if any.
- f. The proximity of the noise to residential sleeping facilities.
- g. The nature and use of the area from which the noise source is located.
- h. The nature and use of the receiving land.
- i. The time of day or night the noise occurs.
- j. The duration of the noise.
- k. Whether the noise is produced by a commercial or noncommercial activity.
- l. Whether the noise falls under one of the listed exceptions pursuant to Section 14-24.
- m. Whether a person of normal auditory sensibilities can hear a noise disturbance while standing or in a vehicle with engine off and windows rolled down in excess of 1,000 feet or more from the noise generating property's adjacent closest property line between the hours of 10:00 p.m. to 7:00 a.m.

(2) *Consideration.* Enforcement under subsection (b) of this section requires consideration of all applicable standards listed in subsection (b)(1) and a determination as to whether or not a noise disturbance exists by the Sheriff's Office or by a Town code enforcement officer other authorized enforcement personnel on the scene.

Sec. 14-24 - Exceptions.

The following will not be considered a violation of this Article:

- (a) The operation of warning or emergency signal devices such as sirens, horns and bells when utilized for their intended purpose in cases of emergency.
- (b) 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 work in the public interest.
- (c) Operation of equipment or conduct of activities normal to residential 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 clipping and other normal community operations, is allowed between the hours of 7:00 a.m. to 7:00 p.m., provided that the equipment is in accord with the manufacturer's specifications and with all manufacturer's sound reducing equipment in use and in proper operating condition. Operation of equipment for solid waste and recycling collection in or adjacent to residential uses between the hours of 6:30 a.m. to 6:00 p.m., and operation of equipment for solid waste and recycling collection in nonresidential locations between the hours of 4:00 a.m. to 10:00 p.m. Golf courses may obtain a waiver pursuant to the permit process found in Section 14-25.
- (d) Noise resulting from safety features required by law for equipment or operations, including, but not limited to, backup alarms or vehicle motion alarms.
- (e) Noises resulting from a special event authorized pursuant to Chapter 22 of the Code provided such noises are in compliance with any specific limitations as set forth within the special event permit. If no specific limitations are set forth in the special event permit, the provisions of this Article shall fully apply.

Sec. 14-25- Waivers.

- (a) Applications for a waiver for relief from the maximum allowable noise level limits designated in this Article shall be made in writing. Such applications for waivers will be made to the Town Manager or the Town Council when the activity creating such noise is located within the Town's corporate boundaries. Any waiver granted by the Town Manager or the Town Council must be provided to the applicant in writing within thirty (30) days of application to the Town and contain all conditions required for compliance with the waiver approval. The Town Manager or the Town Council may grant the waiver under the following conditions:
 - (1) The Town Manager in granting a waiver may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding neighborhood.

(2) Waivers may be issued for no longer than one hundred eighty (180) days, renewable by further application to the Town Manager or the Town Council.

(b) Any party aggrieved by the Town Manager's decision under this section, may appeal to Town Council within thirty (30) days from the date of written decision on the waiver.

DEFEATED

Sec. 14-26 - Enforcement.

The Town's Code Enforcement Officers and the Lee County Sheriff's Office is empowered to investigate any situation where a person is alleged to be violating this Article. If an Officer encounters a circumstance which reasonably indicates that a person is violating this Article, the Officer will conduct either a sound level measurement test or noise disturbance determination in accordance with this Article to determine whether or not a violation exists. Nothing in this Article shall prohibit the Lee County Sheriff's Office 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, Florida Statutes, as may be amended from time to time, nor prohibit the enforcement of this Article in accordance with Article V of Chapter 2 of the Fort Myers Beach Land Development Code (Code Enforcement).

Sec. 14-27 - Penalties.

Any person or persons, firm or corporation or any agent thereof who violates any of the provision of this Article will, 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 both. In addition to the foregoing penalties, the general penalties set forth in Section 1-12 of the Fort Myers Beach Code and Article V of Chapter 2 of the Fort Myers Beach Land Development Code (Code Enforcement) shall apply to any person firm or corporation or any agent thereof who violates any of the provision of this Article. Each separate occurrence of a violation will constitute a separate offence and will be punishable as such.

Sec. 14-28 - Civil Remedies.

In addition to the penalties provided in Sec. 14-27, the Town Manager is hereby authorized to institute any appropriate action or proceeding including suit for injunctive relief in order to prevent or abate violations of this Article.

Sec. 14-29 - Rules and Regulation.

The Council is authorized and empowered to adopt and promulgate, by administrative code, such reasonable rules and regulations as may be necessary to carry out and enforce the purposes of this Article.

SECTION 2. CODIFICATION AND SCRIVENER'S ERRORS

The Council intends that this Ordinance be made part of the Code of Ordinances, Town of Fort Myers Beach, Florida; and that sections of this Ordinance can be renumbered or re-lettered to the appropriate word or phrase to accomplish codification, and regardless of whether this Ordinance is ever codified, the Ordinance can be renumbered or re-lettered and typographical errors and clarification of ambiguous wording that do not affect the intent can be corrected with the authorization of the Town Manager without the need for a public hearing.

SECTION 3. CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION 4: SEVERABILITY AND SUBSTITUTION CLAUSE

Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Substitution of Message. It is not the intent of this Ordinance to afford greater protection to commercial speech than to noncommercial speech. Any sound allowed under this Code may contain, in lieu of any other sound, any otherwise lawful noncommercial message that complies with all other requirements of this ordinance. The sound may be emitted from commercial to noncommercial speech, or from one noncommercial message to another, as frequently as desired, provided the sound continues to comply with all requirements of this Code.

SECTION 5: MODIFICATION

It is the intent of the Council that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications will be incorporated into the final version of this Ordinance.

SECTION 6: EFFECTIVE DATE

This Ordinance shall take effect immediately upon adoption by the Town Council.

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THE FOREGOING ORDINANCE was moved for adoption upon a motion by Mayor Tracey Gore with second by Council Member Boback and upon being put to a roll call vote, the result was as follows:

Tracey Gore, Mayor	Aye	Joanne Shamp, Vice-Mayor	Nay
Dennis Boback	Aye	Anita Cereceda	Nay
Bruce Butcher	Excused		

DULY DEFEATED this 4th day of March, 2019.

TOWN OF FORT MYERS BEACH

ATTEST:

By: _____
Tracey Gore, Mayor

By: _____
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: _____
John R. Herin, Jr., Town Attorney