

LEE COUNTY ORDINANCE NO. 94-17

AN ORDINANCE AMENDING THE LEE COUNTY NOISE CONTROL ORDINANCE NO. 93-15, SO AS TO REVISE THE CRITERIA FOR MAXIMUM PERMISSIBLE SOUND LEVELS; TO PROVIDE SPECIFIC PROHIBITIONS DURING CERTAIN HOURS FROM SOUNDS EMANATING FROM RADIOS, TELEVISIONS, LOUDSPEAKERS, SOUND AMPLIFIERS AND OTHER MECHANICAL DEVICES OR INSTRUMENTS WHICH ARE PLAINLY AUDIBLE; SETS FORTH CRITERIA FOR PLAINLY AUDIBLE SOUND; PROVIDING FOR SEVERABILITY, CONFLICTS IN LAW, INCLUSION IN CODE, CODIFICATION AND SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Lee County, Florida is the governing body in and for Lee County; and

WHEREAS, the creation of excessive noise is a condition which has existed for some time and is a hazard to the public health, welfare and safety, and the quality of life; and

WHEREAS, the said noises and amount of intensity of said noises are increasing within the area of said County; and

WHEREAS, the citizens of Lee County have a right and should be insured an environment free from excessive sound that may jeopardize their health or welfare; and

WHEREAS, loud musical entertainment emanating from lounges, restaurants and night club establishments have severely impacted and disrupted surrounding residential communities; and

WHEREAS, the Board of County Commissioners now desires to regulate during certain hours the use of loud music which disturbs the peace, quiet and comfort of neighboring inhabitants.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION ONE:

The Lee County Noise Control Ordinance, No. 93-15, is hereby amended as follows, with underlined language being an addition to previously adopted text and deleted language being shown by struck-through type.

SECTION TWO:

Section Five, SOUND LEVELS BY RECEIVING LAND USE, is hereby amended as follows:

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, as specified in Lee County Code of Noise Enforcement Practices, which establish uniform guidelines for measuring and recording sound levels for the enforcement of this Ordinance. These standards shall be established and become a part of the Lee County Administrative Code.

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 1 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. ~~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. ~~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 12:00 a.m. from the property line of the noise source.

Operating or permitting the use or operation of any radio receiving set, musical instrument, television, phonograph, drum, exterior loudspeaker, or other device for the production or reproduction of sound in such a manner as to cause noise disturbance so as to disturb the peace, quiet and comfort of the neighborhood and vicinity thereof; operating any such device between the hours of 12:01 a.m. and the following 10:00 a.m. in such a manner as to be plainly audible across property boundaries or through partitions common to two (2) parties within a building or plainly audible at fifty (50) feet from such device when operated within a public space or within a motorboat.

4. For purposes of subsection 3 above, the term "plainly audible" shall mean any sound produced, including sound produced by a portable soundmaking device that can be clearly heard by a person using his or her normal hearing faculties, at a distance of fifty (50) feet or more from the source. Any law enforcement personnel or citizen who hears a sound that is plainly audible, as defined herein, shall be entitled to measure the sound according to the following standards:

a. The primary means of detection shall be by means of the complainant's ordinary auditory senses, so long as their hearing is not enhanced by any mechanical device, such as a microphone or hearing aid.

b. The complainant must have a direct line of sight and hearing to the source producing the sound so that he or she can readily identify the offending source and the distance involved.

- c. The complainant need not determine the particular words or phrases being produced or the name of any song or artist producing the sound. The detection of a rhythmic bass reverberating type sound is sufficient to constitute a plainly audible sound.

D.E/ 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 Lee County Board of County Commissioners, or its designee, when the activity creating such noise is located within the unincorporated area of Lee County.

- E.F/ 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 THREE: SEVERABILITY

The provisions of this Ordinance are severable and it is the legislative intention to confer upon the whole or any part of the Ordinance the powers herein provided for. If any of the provisions of this Ordinance shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of the Ordinance. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such unconstitutional provision not been included herein.

**SECTION FOUR: 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 shall apply.

**SECTION FIVE: CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS**

It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Lee County Code; and that sections of this ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, sections of this Ordinance may be renumbered or relettered and typographical errors which do not affect the intent may be authorized by the County Administrator, or his designee, without need of public hearing, by filing a corrected or recodified copy of same with the Clerk of Circuit Court.

**SECTION SIX: EFFECTIVE DATE**

This Ordinance shall take effect immediately upon receipt of official acknowledgment from the Secretary of State of Florida that it has been filed with that office.

The foregoing Ordinance was offered by Commissioner Manning, who moved its adoption. The motion was seconded by Commissioner St. Cerny and, being put to a vote, the vote was as follows:

JOHN E. MANNING	<u>aye</u>
DOUGLAS ST. CERNY	<u>aye</u>
RAY JUDAH	<u>nay</u>
FRANKLIN MANN	<u>nay</u>
JOHN E. ALBION	<u>aye</u>

DULY PASSED AND ADOPTED this 6th day of July, 1994.

ATTEST:  
CHARLIE GREEN, CLERK

By: *Charlie Green*  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: *Ray Judah*  
Chairman

LEE COUNTY ATTORNEY'S OFFICE  
APPROVED AS TO FORM:

By: *Ally E. Via*  
Assistant County Attorney