

LEE COUNTY ORDINANCE NO. 14-18

AN ORDINANCE REPEALING AND REPLACING LEE COUNTY ORDINANCE NO. 93-15, AS PREVIOUSLY AMENDED BY ORDINANCE NOS. 94-17, 96-13 AND 11-10, A/K/A THE LEE COUNTY NOISE CONTROL ORDINANCE; PROVIDING FOR REPEALER; 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; MODIFICATION; AND AN EFFECTIVE DATE.

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

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

WHEREAS, the Board has enacted the Lee County Noise Control Ordinance and made subsequent amendments to this ordinance; and

WHEREAS, the purpose of this Ordinance is to repeal and replace the current regulations to provide a clear delineation of enforcement procedures and standards with concise guidelines for regulating noise disturbances within the County; and

WHEREAS, the Board intends to utilize the Lee County Hearing Examiner for appeals of waivers denied under this ordinance; and

WHEREAS, the Board desires to repeal and replace the Lee County Noise Control Ordinance No. 93-15, as previously amended by Ordinance Nos. 94-17, 96-13 and 11-10, to affect the purposes set forth herein and to secure and promote the health, safety, and welfare of the citizens and residents of the County.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Lee County, Florida:

**SECTION ONE: REPEALER**

Lee County Ordinance 93-15, as amended by Ordinance Nos. 94-17, 96-13 and 11-10, otherwise known as the Lee County Noise Control Ordinance, is hereby repealed, declared void and without further effect, except as provided herein.

**SECTION TWO: SHORT TITLE AND TERRITORIAL SCOPE**

This ordinance will be known and cited as the "Lee County Noise Control Ordinance" and will be applicable in all unincorporated Lee County.

**SECTION THREE: FINDINGS AND PURPOSE**

A. Lee County finds that excessive, loud and raucous noise degrades the environment of the County 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.

B. Both effective control and the elimination of excessive, loud and raucous noise are essential to the health, safety and welfare of the County's residents and visitors, and to the conduct of normal pursuits of life, including, but not limited to, recreation, work, communication, and rest.

C. This Ordinance is enacted to protect, preserve, and promote the health, safety, welfare, peace and quiet of the residents of Lee County 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.

D. Nothing contained in this Ordinance 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 Ordinance enacts narrowly drawn, content-neutral regulations that are to be interpreted so as to not unduly restrict constitutionally protected rights.

## SECTION FOUR: DEFINITIONS

The words and phrases used in this Ordinance 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 for slow response.

*Agricultural use:* Land used primarily for farming, the raising of farm animals, and nurseries.

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

*Board:* The Board of County Commissioners of Lee County, Florida.

*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.

*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.

*Industrial use:* Land used primarily for manufacturing, processing and other industrial uses.

*Land:* Earth, water and air above, below or on the surface, and includes any improvements or structures customarily regarded as land.

*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, 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 Ordinance, 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 or industrial.

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

*Lee County Sheriff's Office:* The designated authority charged with administration and enforcement of the Lee County 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 Ordinance shall meet or exceed the requirements for type 2 sound level meter in accordance with American National Standards Institute 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.

## **SECTION FIVE: 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 SIX: PROHIBITED ACTS**

The occurrence of the conditions, acts or omissions as described in either subsection (A) or (B) of this section will constitute a violation of this Ordinance. 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 (B) 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.

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.

Table 1  
SOUND LEVELS BY RECEIVING LAND USE

Land Use Category	Time	Sound Level Limit dBA
Residential, public space, or agricultural	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
Manufacturing or industrial	At all times	75

(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 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 shall be increased by ten (10) dBA from 7:00 a.m. to 10:00 p.m.

(2) *Establishment of use.* In instances where an industrial or 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 or industrial use adjoining the residential use, the sound level limit for the receiving residential use will be that of the commercial or industrial use,

whichever applicable, as set forth in Table 1 above. Establishment of the commercial or industrial uses' existence before residential use encroachment is an affirmative defense to a violation of this Ordinance.

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

- 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 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 of this section, as measured from at or within the real property line of the receiving land. 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.

(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 the A-weighted network and slow response.
4. If possible, determine and record the ambient noise level during some point in the observation. The A-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, and whether it can be plainly heard from the receiving land.
- 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.

(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 personnel on the scene. Determinations must be made from the receiving land, after locating the sound source, by the Sheriff's Office personnel using his



or her normal auditory senses, where applicable, without the use of any hearing enhancement or hearing aid.

## **SECTION SEVEN: EXCEPTIONS**

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

- 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. Noise created by the operation of railways and shipping lanes.
- D. Noise created by the operation of all Lee County Airports.
- E. Noise created by 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. operation of equipment for solid waste and recycling collection in or adjacent to residential uses between the hours of 6:00 a.m. and 6:00 p.m. and operation of equipment for solid waste collection in nonresidential locations between the hours of 4:00 a.m. and 10:00 p.m.
- F. Noise resulting from safety features required by law for equipment or operations, including, but not limited to, backup alarms or vehicle motion alarms.
- G. Noises associated with farm operations protected by the Florida Right to Farm Act, Section 823.14, F.S.

**SECTION EIGHT: 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 will be made to the County Manager or designee when the activity creating such noise is located within the unincorporated area of Lee County. Any waiver granted by the County Manager or designee must be provided to the applicant in writing within thirty (30) days of application to the County and contain all conditions required for compliance with the waiver approval. The County Manager or designee may grant the waiver under the following conditions:

A. The County Manager or designee in granting a waiver may prescribe any reasonable conditions or requirements deemed 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 use area by operations which were in existence on or before April 29, 1993.

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

Any applicant aggrieved by the County Manager's or designee's decision under this Section, may appeal to the Lee County Hearing Examiner within thirty (30) days from the date of written decision on the waiver.

**SECTION NINE: ENFORCEMENT**

The Lee County Sheriff's Office is empowered to investigate any situation where a person is alleged to be violating this Ordinance. If an Officer encounters a circumstance which reasonably indicates that a person is violating this Ordinance, the Officer will conduct either a sound level measurement test or noise disturbance determination in accordance with Section Five of this Ordinance to determine whether or not a violation of this Ordinance exists. Nothing in this Ordinance 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 Florida Statutes Section 877.03, as may be amended from time to time.

**SECTION TEN: PENALTIES**

Any person or persons, firm or corporation or any agent thereof who violates any of the provision of this ordinance 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 by both fine and imprisonment. Each separate occurrence of a violation of this ordinance will constitute a separate offence and will be punishable as such hereunder.

**SECTION ELEVEN: CIVIL REMEDIES**

In addition to the criminal penalties provided in Section Nine of this Ordinance, the Board of County Commissioners 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 TWELVE: RULES AND REGULATIONS**

The Board 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 Ordinance.

**SECTION THIRTEEN: CODIFICATION AND SCRIVENER'S ERRORS**

The Board intends that this Ordinance be made part of the Lee County Code of Ordinances; and that sections of this Ordinance can be renumbered or re-lettered and the word "Ordinance" can be changed to "Section", "Article", or some other 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 County Manager without the need for a public hearing.

**SECTION FOURTEEN: 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 FIFTEEN: SEVERABILITY**

It is the Board's intent that if any section, subsection, clause or provision of this Ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will be considered a separate provision and will not affect the remaining provisions of this Ordinance. The Board further declares its intent that this Ordinance would have been adopted if such invalid or unconstitutional provision was not included.

**SECTION SIXTEEN: MODIFICATION**

It is the intent of the Board 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 SEVENTEEN: EFFECTIVE DATE**

This Ordinance takes effect immediately upon its filing with the Office of the Secretary of the Florida Department of State.

Commissioner John Manning made a motion to adopt the foregoing ordinance. The motion was seconded by Commissioner Brian Hamman. The vote was as follows:

John Manning	Aye
Cecil L Pendergrass	Aye
Larry Kiker	Aye
Brian Hamman	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED THIS 2nd day of September, 2014.

ATTEST:  
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: Maricia Wilson  
Deputy Clerk

By: Cecil Pendergrass  
FOR: Larry Kiker, Chair



APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

By: Neysa Borkert  
Neysa Borkert  
Assistant County Attorney  
Office of the County Attorney



**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

September 5, 2014

Honorable Linda Doggett  
Clerk of the Circuit Courts  
Lee County  
Post Office Box 2469  
Fort Myers, Florida 33902-2469

Attention: Marcia Wilson, Deputy Clerk

Dear Ms. Doggett:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy for Lee County Ordinance No. 14-18, which was filed in this office on September 5, 2014.

Sincerely,

Ernest L. Reddick  
Program Administrator

ELR

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MINUTES OFFICE  
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