

LEE COUNTY ORDINANCE NO. 93-15

AN ORDINANCE AMENDING AND RESTATING IN ITS ENTIRETY THE LEE COUNTY NOISE CONTROL ORDINANCE NUMBER 82-32, AS AMENDED, SO AS TO PROVIDE CLARIFICATION AND PROVIDE FOR VARIOUS AMENDMENTS; AMENDING SECTION THREE, DEFINITIONS; AMENDING SECTION SIX, EXCEPTIONS, TO CLARIFY THAT THE SHERIFF'S DEPARTMENT MAY CHARGE INDIVIDUALS WITH BREACH OF THE PEACE; ADDING SECTION EIGHT, ENFORCEMENT, TO EMPOWER THE SHERIFF'S DEPARTMENT WITH THE ENFORCEMENT OF THE ORDINANCE; AMENDING SECTION NINE, PENALTIES; PROVIDING FOR SEVERABILITY, INCLUSION IN CODE, CODIFICATION AND SCRIVENER'S ERRORS, PROVIDING FOR REPEALER 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, the Lee County Sheriff's Department has agreed to accept enforcement responsibility for noise control in Lee County

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS of Lee County, Florida:

SECTION ONE: SHORT TITLE - This Ordinance may be known and cited as the "Lee County Noise Control Ordinance".

SECTION TWO: DECLARATION OF NECESSITY - It is found and declared that:

A. The making and creation of excessive, unnecessary or unusually loud noises within the unincorporated area of Lee County is a condition which has existed for some time and the amount and intensity of such noises is increasing.

B. The making, creation or maintenance of such excessive unnecessary, unnatural or unusually loud noises which are prolonged, unusual and unnatural in their time, place and use effect are a detriment to the public health, comfort, convenience, safety, welfare and prosperity of the residents of Lee County.

C. The necessity in the public interest for the provisions and prohibitions hereinafter contained and enacted is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, comfort, safety, welfare and repose of Lee County and its inhabitants.

SECTION THREE : DEFINITIONS - The words and phrases used in this Ordinance are defined as follows:

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 given 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. Director of Lee County Codes and Building Services or its successor agency, or his designee, is the designated authority charged with administration and enforcement of Chapter 88.~~

~~E.F. Emergency~~ - An occurrence or set of circumstances involving actual or imminent physical trauma or property damage threatened or caused by an emergency.

~~F.G. 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.H. 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.X/ Intermittent Noise - A noise whose sound pressure level exceeds the ambient noise level at either regular or irregular intervals.

I.Y/ Noise - Any sound which annoys or disturbs humans or causes or tends to cause an adverse psychological effect on humans.

J.Z/ Noise Disturbance - One or a group of loud, harsh, non-harmonious sounds or vibrations that are unpleasent 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.A/ 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.M/ 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.N/ 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.O/ 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.P/ RMS Sound Pressure - means the square root of the time averaged square of the sound pressure, denoted Prms.

P. Sheriff's Department - is the designated authority charged with administration and enforcement of the Lee County Noise Control 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 51.4.

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 ( $20 \times 10^{-6}$  N/m<sup>2</sup>). 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, 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 iimits set forth in Table 1 shall be increased by 10 dBA from 7 a.m. to 10 p.m.

C. 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.

D. Construction Noise.

1. 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.

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.

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 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 railways and shipping lanes.

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 Lee County Board of County Commissioners, or its designee, and any other applicable permit to operate such event as required by this County.

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, refuse collection, 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 Board of County Commissioners or its designee~~, when the activity creating such noise is located within the unincorporated area of Lee County. Any waiver granted by the Board, or its designee, must be in writing and shall contain all conditions upon which said permit shall be effective. The Board, or its designee, may grant the waiver as applied for under the following conditions:

A. The Board of County Commissioners, or its designee, in granting a permit, 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 Board of County Commissioners, or its designee.

Any party feeling aggrieved by the denial of its application for waiver by the Board, or its designee, may appeal such denial to the Board of County Commissioners of Lee County, Florida, such appeal to be filed within 30 days from the date of denial.

SECTION EIGHT: ENFORCEMENT - The Lee County Sheriff is empowered to investigate any situation where a person is alleged to be violating this ordinance. If the Sheriff encounters a circumstance which reasonably indicates that a person is violating this Ordinance, he shall administer a sound level pressure test with a sound level meter and ascertain whether a breach of the peace has occurred. If the results of the sound test indicate a violation of this Ordinance is occurring or has occurred in the presence of the Sheriff, the Sheriff is thereupon authorized to issue a notice to appear to, or arrest, the person producing, causing to be produced, or allowing to be produced, the sound.

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 ~~day that such violation is committed or permitted to continue~~ shall constitute a separate offense and shall be punishable as such hereunder.

SECTION TEN: 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 ELEVEN: AREAS EMBRACED - All territory located within the unincorporated area of Lee County, Florida, shall be embraced by the provisions of this Ordinance.

SECTION TWELVE: SEVERABILITY - If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are declared severable.

SECTION THIRTEEN: INCLUSION IN CODE, CODIFICATION, 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 the word "ordinance" may be changed to "section", or such other appropriate word or phrase in order to accomplish such intentions; 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 the Circuit Court.

SECTION FOURTEEN: REPEALER - Lee County Ordinance 82-32, as amended by Lee County Ordinances 83-22 and 88-47, is hereby repealed and replaced with the contents of this Ordinance.

SECTION FIFTEEN: EFFECTIVE DATE - These regulations shall become effective immediately upon receipt of the official acknowledgment of the Secretary of State of Florida that these regulations have been filed with said office.

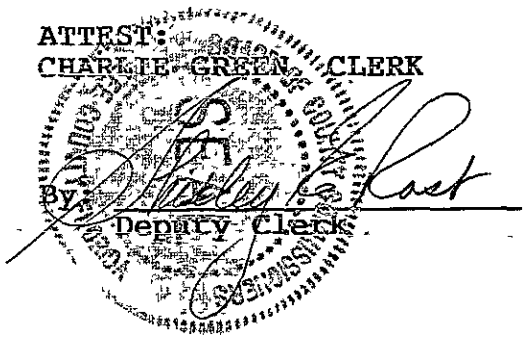
THE FORBGOING ORDINANCE was offered by Commissioner Douglas St. Cerny who moved its adoption. The motion was seconded by Commissioner Ray Judah and, upon being put to a vote, the vote was as follows:

JOHN E. MANNING	Aye
DOUGLAS ST. CERNY	Aye
RAY JUDAH	Aye
FRANKLIN MANN	Aye
JOHN E. ALBION	Aye

PASSED AND DULY ADOPTED THIS 21st DAY OF April, 1993.



ATTEST:  
CHARLIE GREEN, CLERK



BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: I [Signature]  
Chairman

APPROVED AS TO FORM:

By: [Signature]  
Office of The County Attorney