

LEE COUNTY ORDINANCE NO. 22-10

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, AMENDING LEE COUNTY ORDINANCE 14-18 RELATING TO NOISE CONTROL; PROVIDING FOR CONFLICTS OF LAW; SEVERABILITY; CODIFICATION AND SCRIVENER'S ERRORS; PROVIDING FOR MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners (the "Board") is the governing body in and for Lee County, a political subdivision and Charter County of the State of Florida ("County"); and

WHEREAS, the Board is authorized pursuant to Chapter 125, Florida Statutes, to enact Ordinances necessary in the exercise of its powers; and

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code on March 19, 2022 and recommended their adoption; and

WHEREAS, the Local Planning Agency reviewed the proposed amendments on February 28, 2022 and found them consistent with the Lee Plan, as indicated.

WHEREAS, the County has determined that it is in the County's best interests to amend the Lee County Noise Ordinance as follows.

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

SECTION ONE: AMENDMENT TO ORDINANCE

Lee County Noise Control Ordinance No. 14-18 is amended as follows with strike through identifying deleted text and underline identifying new text.

SECTION TWO: Section Four of Lee County Ordinance No. 14-18 is hereby amended to read as follows:

SECTION FOUR: DEFINITIONS

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

A-weighted level (dBA) through Board remain unchanged.

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

Commercial use through Noise disturbance remain unchanged.

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

Person through Public space remain unchanged.

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 (1/3) octave band sound pressure level in the band with the tone exceeds arithmetic average value of the sound pressure levels of the two (2) contiguous one-third (1/3) octave bands by five (5) dB for center frequencies of five hundred (500) Hz and above and by eight (8) dB for center frequencies between one hundred sixty (160) and four hundred (400) Hz and by fifteen (15) dB for center frequencies less than or equal to one hundred twenty-five (125) Hz.

Real Property line through Sound source remain unchanged.

SECTION THREE: Section Six of Lee County Ordinance No. 14-18 is hereby amended to read as follows:

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- or, at the discretion of the officer, those limits set forth in the Alternative Table 2 as measured from the real property line of the noise source.

Table 1
SOUND LEVELS BY RECEIVING LAND USE

Land Use Category	Time	Sound Level Limit	
		dBA	<u>dBC</u>
Residential, public space or agricultural	7:00 a.m.—10:00 p.m.	66	<u>71</u>
	10:00 p.m.— 7:00 a.m.	55	<u>60</u>
Commercial or business	7:00 a.m.—10:00 p.m.	72	<u>77</u>
	10:00 p.m.— 7:00 a.m.	65	<u>70</u>
Manufacturing or industrial	At all times	75	<u>80</u>

Table 2
ALTERNATIVE SOUND LEVELS BY EMITTING LAND USE

<u>Land Use Category</u>	<u>Time</u>	<u>Sound Level Limit</u>	
		<u>dBA</u>	<u>dBC</u>
<u>All land uses excluding manufacturing or industrial</u>	<u>7:00 a.m.—10:00 p.m.</u>	<u>75</u>	<u>80</u>
	<u>10:00 p.m.— 7:00 a.m.</u>	<u>72</u>	<u>77</u>

(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 or dBC.
- 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 or dBC 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 or fifty five (55) dBC during the hours between 7:00 a.m. to 10:00 p.m. or forty-five (45) dBA or fifty (50) dBC 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)~~twenty-four-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 or sixty (60) dBC, 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: in accordance with Table 1.

or at the boundary of the emitting land when taking the measurement in accordance with Table 2.

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 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 and C-weighted ambient noise level, including wind effects and noises other than the sound source, must be at least five (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 FOUR: Section Seven of Lee County Ordinance No. 14-18 is hereby amended to read as follows:

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 F.S. § 823.14., F.S.~~
- H. Noises resulting from: (A) The regular maintenance testing of standby emergency power generators, provided that any sound attenuation provided by the manufacturer is retained, and provided that the noise occurs between the hours of 9:00 a.m. and 5:00 p.m., Monday through Saturday, excluding the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day. The frequency of the maintenance testing and the duration of each test shall be no more frequent and not longer in duration than thirty (30) minutes once a week. (B) Noise associated with emergency power generators in the event of a power outage at the discretion of the Sheriff's Office.
- I. Noises consistent with cultural or traditional observed holidays such as New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day.

SECTION FIVE: Section Nine of Lee County Ordinance No. 14-18 is hereby amended as follows:

SECTION NINE: ENFORCEMENT

The Lee County Sheriff's Office or designee is empowered to investigate any situation where a person is alleged to be violating this Ordinance. If an officer or designee encounters a circumstance which reasonably indicates that a person is violating this Ordinance, the Officer or designee 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 Chapter 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~~ F.S. § 877.03, as may be amended from time to time.

SECTION SIX: CONFLICTS OF LAW

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

SECTION SEVEN: SEVERABILITY

If any provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, it is the Board's intention that such portion will become a separate provision and will not affect the remaining provisions of the ordinance. The Board further declares that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION EIGHT: CODIFICATION AND SCRIVENER'S ERRORS

The Board intends that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that 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 relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Manager or his designee, without the need for a public hearing.

SECTION NINE: MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING

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

SECTION TEN: EFFECTIVE DATE

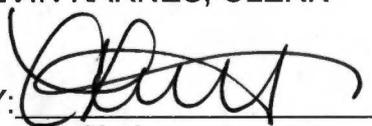
This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

Commissioner Hamman made a motion to adopt the foregoing ordinance, seconded by Commissioner Ruane. The vote was as follows:

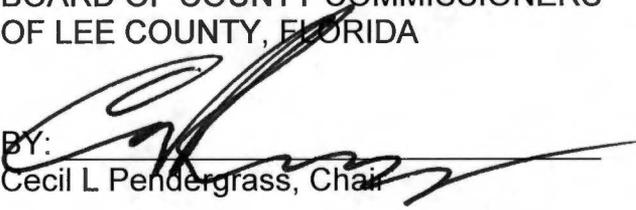
Kevin Ruane	Aye
Cecil L Pendergrass	Aye
Raymond Sandelli	Aye
Brian Hamman	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 19th day of April 2022.

ATTEST:
KEVIN KARNES, CLERK

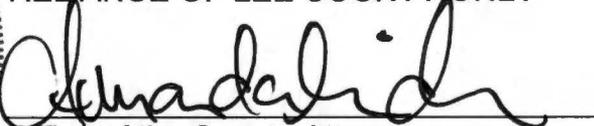
BY: 
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: 
Cecil L Pendergrass, Chair



APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY


Office of the County Attorney



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

April 20, 2022

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

Attn: Chris Jagodzinski

Dear Mr. Karnes:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Lee County Ordinance No. 22-10, which was filed in this office on April 20, 2022.

Sincerely,

Anya Owens
Program Administrator

AO/lb

RECEIVED

By Chris Jagodzinski at 3:38 pm, Apr 20, 2022