

## ORDINANCE NO. 17-12

**AN ORDINANCE AMENDING CHAPTER 14, ARTICLE II, IN THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES, "NOISE CONTROL," AMENDING SECTION 14-24, "EXCEPTIONS," SUBSECTION (4), TO LIMIT THE EXCEPTION FOR ORDINARY NOISE CREATED BY THE OPERATION OF REFUSE AND RECYCLABLES COLLECTION FROM NON-RESIDENTIAL LOCATIONS SO THAT SUCH COLLECTION MAY ONLY OCCUR BETWEEN THE HOURS OF 6:30 A.M. AND 6:30 P.M.; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.**

WHEREAS, the Town Council ("the Council") is the governing body in and for the Town of Fort Myers Beach, a municipal corporation in the State of Florida; 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 an exception for ordinary noise created by the operation of refuse and recyclables collection within the Town; and

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

### **Sec. 14-24 - Exceptions.**

- (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 6:30 p.m., and operation of equipment for solid waste and recycling collection in nonresidential locations between the hours of 6:30 a.m. to 6:30 p.m. Golf

courses may obtain a waiver pursuant to the permit process found in Section 14-25.

## **SECTION 2: CODIFICATION AND SCRIVENER'S ERRORS**

The Town 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.

The foregoing Ordinance was adopted by the Town Council upon a motion by Council Member Cereceda and seconded by Vice Mayor Gore, and upon being put to a roll call vote, the result was as follows:

Dennis Boback, Mayor	aye
Tracey Gore, Vice Mayor	aye
Anita Cereceda	aye
Joanne Shamp	aye
Bruce Butcher	aye

DULY PASSED AND ADOPTED THIS 21<sup>st</sup> DAY OF AUGUST, 2017 BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH.

By:   
Dennis C. Boback, Mayor

ATTEST:

By:   
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency

By:   
The Peterson Law Group,  
Town Attorney