



# Creating an Entertainment District



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## **INTRODUCTION**

On April 15, 2013, the Town Council reviewed a workshop presentation introducing the concept of Entertainment Districts with a possible application to the Town of Fort Myers Beach. The defining attributes of Entertainment Districts were discussed including their advantages and disadvantages.

This report represents a follow-up to that workshop with the objective of exploring the actual creation of a working Entertainment District including an implementing ordinance. The project includes understanding possible noise impacts, control of the hours of operation for outside entertainment and analyzing possible impacts on the Comprehensive Plan.

## **METHODOLOGY AND APPROACH**

The methodology for this study has included multiple approaches of analysis. To begin it was thought important to talk to business owners that would be likely included within an Entertainment District, whether they were eating and drinking establishments, retail stores, hotels or short term rentals. A series of interviews was conducted with the Executive Director of the Town's Chamber of Commerce and approximately 13 business owners within the boundaries of a possible Entertainment District. Additionally, Town Planning and Zoning staff, the Town Attorney, and Law Enforcement representatives were contacted to gain their perspectives regarding the important issues involving Entertainment Districts.

To adequately explore this subject has required analysis of a number of issues or characteristics that would determine the ultimate success or viability of such a District. In this report various regulations such as the Town's Noise Ordinance have been examined as well as restrictions for alcohol consumption, special exception approvals for outside entertainment, the special event approval process, and parking regulations. The Comprehensive Plan has been reviewed to determine possible compatibility issues if an Entertainment District was to be established as a Zoning and/or Overlay District for the Town of Fort Myers Beach. Additionally, another factor in creating the Entertainment District includes the delineation of its boundaries. A geographic boundary outline has been recommended in this report based on the outcome of our business respondent interviews and residential compatibility issues.

Before, creating a model ordinance for a Town Entertainment District it was also necessary to examine various entertainment districts as well as noise ordinances from other local governments. Various approaches or solutions that have been used in other jurisdictions have been noted in this report when it was thought applicable to developing a viable Entertainment District for the Town of Fort Myers Beach.

The final product of our analysis has been to create a model ordinance that would incorporate the various controls and safeguards for a viable Town Entertainment District.



## REVIEW OF TOWN DOCUMENTS AND REGULATIONS

### ALCOHOL CONSUMPTION RESTRICTIONS

Section 34-1264, of Division 5, Alcoholic Beverages of Chapter 34 contains the regulations governing the sale and service of on-premises consumption of alcoholic beverages. These regulations apply to all such activities throughout the Town, including within the Downtown Zoning District which allows bars and cocktail lounges as a permitted use. The Entertainment District will be located wholly within the Downtown Zoning District. A summary of these regulations follows:

1. This Section provides for administrative approval of sale or service for on-premises consumption in bars or cocktail lounges, clubs and membership organizations, hotels/motels, and restaurants. However, this section also reserves the right to require approval of a special exception when warranted by special circumstances, including locational separation standards.
2. Requires approval of a special exception for consumption on the premises for any establishment serving such beverages in outdoor seating areas, except that service to and consumption in out-door seating areas of restaurants may be approved administratively under certain circumstances.
3. Except where otherwise exempted, no establishment for the sale or service of alcoholic beverages for consumption on the premises may be located within 500 feet of the location of a pre-existing:
  - a. place of worship or religious facility;
  - b. noncommercial school;
  - c. child day care center;
  - d. park;
  - e. dwelling unit under separate ownership (except in planned development); and
  - f. another establishment primarily engaged in the sale of alcoholic beverages for consumption on the premises, with certain exceptions.
4. Restaurants serving alcoholic beverages and bars and cocktail lounges must provide off-street parking in accordance with Sec. 34-2020(d)(2).



5. Sec. 34-1264 also provides for regulations governing:
  - a. procedures for administrative and special exception approval;
  - b. temporary one-day permits;
  - c. expiration of approvals;
  - d. transfer of permits;
  - e. expansion of areas designated for permits;
  - f. nonconforming establishments;
  - g. revocation of permits or approvals;
  - h. appeals; and
  - i. special regulations for alcoholic beverages in restaurants requiring that sale of alcoholic beverages be incidental to the sale of food and must comprise no more than 49% of the combined gross sales of food and beverages in any 12-month period, and the keeping of separate records of the sales of food and those of alcoholic beverages.

#### SUGGESTIONS:

Despite the fact that short term rentals of at least a week are considered dwelling units, because they are really more of a commercial use of the property with transient occupancy they should not necessarily be treated as residential uses with respect to the separation requirement. Consequently, we believe that the establishments selling alcoholic beverages for consumption on the premises should not be required to be separated by 500 feet from dwelling units rented for occupancy periods of 30 days or less. This distance should be eliminated entirely.

#### NOISE CONTROL ORDINANCE (ORD.96-24)

We have reviewed the Town's Noise Ordinance (96-24) as codified under Chapter 14, Article II of the Town's Code of Ordinances. The following specifically addresses the content of the ordinance with regard to its practicality and legality as seen from the perspective of the Town Attorneys. The following comments also specifically address handwritten questions and annotations to Ordinance 96-24 provided by Town staff which are indicated in *Segoe print* type face.



1. Maximum permissible sound levels.

Sec. 14-21(a) sets limits on the noise a neighbor may be subjected to based on the land use category of the receiving property. While some jurisdictions base the sound levels on the property generating the noise, it is more reasonable to us to limit the noise level at the receiving property, because the intent of a noise regulation is to protect neighbors from inappropriate noise that is generated on another property.

However, Sec. 14-21(c)(3) sets the maximum sound level for radios, television sets, exterior loudspeakers and similar devices at the property line of the noise source. This is in direct conflict with earlier Sections of the Ordinance that provided that tools for enforcement are to be used “at or within the property line of the receiving land use”. Also, the noise levels and times differ from those in Table 1 of Sec. 14-21(a). These parameters appear to represent an internal conflict within the ordinance, but at the least they can cause confusion in the interpretation and enforcement.

In a memo from Jarred Duke to Marilyn Miller of the Fowler White Boggs law firm, dated July 1, 2013, reviewing the recent Supreme Court decision of State vs. Catalano, it was noted that the Fort Myers Beach Noise Control provisions as now written would likely survive a challenge of “vagueness.” However, the memo also included a finding that Sec. 14-21(c)(3) is overbroad and is not content neutral and would not likely survive a legal challenge from this perspective.

Based on our comments in the first paragraph of this section and the findings by the City Attorney, we would suggest that Sec. 14-21(c)(3) be deleted from the current regulations and similar language not be included in any new noise control regulations pertaining to the Entertainment District. The new language should reaffirm that measuring noise levels would be from the receiving property.

2. Sec. 14-21(a), Table 1: *Are the current decibel limits too low?*

For residential properties the limit is 66 dBA from 7:00 AM to 10:00 PM and 55 dBA from 10:00 PM to 7:00 AM.

The decibel scale chart attached to the ordinance shows normal conversation at one to two meters to be at 60 dBA and passenger car noise at 70 dBA. It appears that these are reasonably accurate representations. For example, New York City notes normal conversation/laughter to be from 50 – 65 dBA and Midtown Manhattan traffic noise from 70 – 85 dBA.

One would not normally expect that sound at the level associated with normal conversation or even a passenger car would be inappropriate for residential properties. Further, we believe one would normally expect somewhat higher sound within an entertainment district. For example, maximum noise levels in Orlando’s Downtown Entertainment District are set at 75 dBA from 7:00 AM to 12 midnight, 70 dBA from 12 midnight to 7:00 AM for weekdays and weekends.

3. Sec. 14-21(a), Table 1: *Are Manufacturing and Industrial land use categories applicable?*

Since the Town has no manufacturing or industrial future land use categories or zoning districts, these are not applicable as land use categories for receiving uses.

4. Sec. 14-21 (c)(1): *Does “multi-family dwelling units” include hotels and short term rentals or are they treated as Commercial?*



The definition “multi-family dwelling units” includes units intended to be occupied for a minimum period of one week or more, therefore, conventional multi-family dwelling units and short-term rentals are included. However, hotels are not included because they may be rented as sleeping accommodations for as little as one day.

5. Sec. 14-21(c)(3): *Does inclusion of the term exterior loudspeakers in this section mean that external speakers/music and outdoor entertainment are allowed?*

It would appear that exterior loudspeakers, in whatever manner they may be used, are currently allowed. However, we do not feel that the allowance of exterior loudspeakers, in and of itself, implies outdoor entertainment, whether it is “canned” or “live” music, is allowed, only that the speakers are allowed outside.

6. Sec. 14-21(c)(3)(b): *Does the fact that there is a gap between 12 midnight and 10:00 AM mean that no speakers are allowed during this time period?*

This is an interesting question, however, because we noted practical problems with the regulations of this section and the Town Attorney found it to be questionable from a legal standpoint, we do not believe it is pertinent. Nevertheless, it does suggest that any provision regulating outdoor entertainment should consider the appropriateness of external loudspeakers, etc. after a certain hour of the nighttime.

7. Sec. 14-21.(e): *Is the reference to the ability of law enforcement to continue enforcing Sec. 877.03 FS pertaining to breach of peace relevant and consistent?*

This section of the Florida Statutes remains available to law enforcement.

8. Sec. 14-22(5): *Any noise created by the operation of all county airports. Is this applicable or necessary?*

Materials obtained from the Lee County Port Authority website confirm that there are portions of Fort Myers Beach lying within the flow corridors of Lee County Airports. This section, rightly exempts airplane noise from the Town’s noise limitations.

9. Sec. 14-22(7): *Does the exemption, between the hours of 7:00 AM and 10:00 PM for operation of equipment or conduct of activities for normal residential or agricultural communities...and other normal community operations, include beach raking?*

While beach raking is not specifically listed, we believe this activity could logically be considered a normal community operation that would be exempted.

## SUGGESTIONS:

1. It would seem that there should be a special Entertainment Ordinance specifically covering the Entertainment District dealing with noise levels, hours of operation, closing hours and vacation of the premises by patrons, etc. This ordinance should include noise and activities generated from properties within the Entertainment District with special consideration given to limiting noise levels on adjacent residential and commercial properties both within and nearby to the Entertainment District.
2. The current regulations use different noise levels for residential and nonresidential receiving areas. Short-term rentals of a week or more are now considered dwelling units. However, occupancy of these units is of a transient nature, more like resort housing, and we suggest that they need not be treated the same as properties used for longer term residential use. If the Entertainment District regulations employ different noise thresholds for residential and commercial properties, we believe noise thresholds for short-term rental properties should be the same as those for other commercial properties.
3. To cure “content neutrality” weaknesses in the current noise ordinance it would seem that the exception clause for noise violation should be closely scrutinized (see Sec. 14-22(6)). The Town’s noise ordinance regulations should apply equally to music, political speech, and advertising. Also, the Town’s regulations need to be more specific in narrowly tailoring its limitation on loud noise. Overbreadth results in a restriction of freedom of expression in a manner more intrusive than necessary.
4. There should be language within the noise regulations applicable to the Entertainment District that reaffirms outside entertainment is allowed.
5. In reference to measurement of noise levels it should be clear in future regulations that they are to be measured from the receiving property not the property line of the sender.
6. In reference to enforcement of potential violations within the Entertainment District there should be an allowance for dual enforcement. The Sheriff’s Department would continue to enforce nuisance violations on an afterhours on call basis but the Town Code enforcement Officers could also be involved if continuous violations were not resolved.

## HOURS OF OPERATION

Aside from limitations on the hours during which establishments may sell or serve alcoholic beverages for consumption on the premises, regulating the hours of operation is not common practice affecting commercial uses in the Town of Fort Myers Beach. In fact, the Land Development Code includes only the following types of limitations:

1. Beach furniture and equipment, but not trash containers, must be removed from the beach between the hours of 9:00 PM until 7:00 AM
2. Between the hours of 9:00 PM and 7:00 AM from May 1 until October 31, all personal watercraft and associated equipment, including but not limited to mooring lines, must be removed from the beach and placed behind the dune line.



3. The hours of operation of a seasonal parking lot are limited to between 7:00 AM and 10:00 PM.
4. The code of conduct for short-term rentals requires that between the hours of 10:00 PM and 7:00 AM, all guests must observe quiet hours. This means all outdoor activity, including swimming, must be kept to a reasonable noise level that is non-intrusive and respectful of neighbors. Town of Fort Myers Beach Ordinance 96-24 sets limits on noise levels during quiet hours and these levels must be obeyed by all guests.
5. The hours of operation of carnivals, fairs, circuses, and amusement devices are limited to 10:00 AM to 10:00 PM, with provision for extension.
6. No structures or equipment of any kind may be left on the beach between the hours of 9:00 PM and 8:00 AM from May 1 until October 31.
7. Rental activity at water-oriented rental establishments is not allowed between the hours of 9:00 PM and 8:00 AM.

#### SUGGESTIONS:

Recognizing that the noise ordinance will be modified, unless one foresees possible visual/light pollution – for example large outdoor movie or video screens – or other problems associated with entertainment uses (particularly those that may affect residential properties during evening and late night hours), we do not envision the need for special hours of operation in the Entertainment District.

#### PARKING

Division 26, Parking, of Chapter 34 contains the regulations governing required off-street parking for allowable uses throughout the Town, and apply equally in the Downtown Zoning District and will also apply in the Entertainment District. Section 34-2020(d)(2) sets forth the basic off-street parking requirements for commercial uses.

Bars, cocktail lounges and restaurants have the highest parking requirements and are specifically identified, as follows:



(2) COMMERCIAL USES.

- a. Bars and cocktail lounges. The minimum requirement is 15 spaces per 1,000 square feet of total floor area. If outdoor seating is provided, an additional one space per four outdoor seats or 75 square feet of outdoor seating area (whichever is greater) must be provided. See also subsection (2)h of this section, pertaining to restaurants, and subsection (4) of this section.
- h. Restaurants. With the exceptions noted below, the minimum parking requirements for restaurants is 8 spaces per 1,000 square feet of total floor area plus any outdoor seating area.
  - 2. *Bars and cocktail lounges.* If the restaurant contains a cocktail lounge or bar, the minimum requirement is 8 spaces per 1,000 square feet of total floor area plus 5 additional spaces per 1,000 square feet of floor area used for the bar or cocktail lounge. If outdoor seating is provided, parking must also be provided for the area used for outdoor seating at these same rates.

Section 2020(4)b provides the parking requirements for multiple-occupancy complexes and employs variations on the parking requirements for bars, cocktail lounges and restaurants that are based on the percentage of the gross floor area of the complex such uses occupy.

- 1. less than 25% of gross floor area – the requirement is 2 spaces per 1,000 sq. ft.
- 2. 25% to 50% of gross floor area – the requirement is 4 spaces per 1,000 sq. ft.
- 3. 50% to 75% of gross floor area – the requirement is 6 spaces per 1,000 sq. ft.
- 4. 75% of gross floor area – the requirement is 6 spaces per 1,000 sq. ft.

SUGGESTIONS:

We see no reason to modify any of the existing parking requirements as they should apply in the Entertainment District just as they are enforced elsewhere throughout the Town.

**SPECIAL EXCEPTION APPROVALS**

From the materials provided by the Town, we identified ten businesses, located within the area most likely to encompass the new Entertainment District, that have received approval of a special exception(s) for consumption on premises and either indoor or outdoor music/entertainment. The basic characteristics of these approvals are summarized below.

- 1. Beached Whale, 1249 Estero Boulevard

June 2013 (for use of outside deck at front of building)

- a. Special exception to permit outdoor consumption on premises for new outside deck at ground level.
- b. Hours of operation for consumption on premises shall be limited to the hours of 7:00 AM to 2:00 AM, daily for inside the building and 11:00 AM to 11:00 PM daily for the lower outdoor deck area.



- c. No live music is permitted. Outdoor televisions shall be limited to 11:00 AM to 11:00 PM daily.
- d. The outdoor seating on the proposed outdoor deck will at all times comply with current building, fire and life safety codes for tables and chairs.

December 1993 (for use of roof deck only)

- a. Special exception was for seating on an outdoor deck on the roof.
- b. No bar or cocktail lounge allowed on the deck.
- c. No entertainment is allowed on the deck, but recorded background music (excluding rap, hard rock and heavy metal music is allowed).
- d. Deck to be used only between 11:00 AM and 11:00 PM daily.

2. Snug Harbor Restaurant (now Nervous Nellies), 1131 First Street, November 2003.

- a. Snug Harbour was originally approved in October, 2002 for an outdoor deck with 170 seats. Expansion to 235 seats was approved in November, 2003. The following conditions were originally part of the 2002 approval and carried forward into the 2003 approval.
- b. Outdoor music or entertainment is limited to 11 PM and live music is limited to non-amplified acoustical music.
- c. Outdoor seating only allowed to be used in conjunction with alcoholic beverages from 11:00 PM to 12 midnight, Monday through Thursday, and from 11:00 AM to 1:00 AM Friday and Saturday; and from 12:00 Noon to 10:00 PM on Sunday.
- d. Outdoor music or entertainment on outside deck to cease no later than 11:00 PM.

3. Smokin' Oyster Brewery, 340 Old San Carlos Boulevard, March 2005.

- a. Music or entertainment is only allowed within the building and is prohibited between 11:00 PM and 11:00 AM and live music is limited to non-amplified music until a noise buffer is installed and approved by the Town, then the prohibition of amplified live music will be lifted.
- b. Seating will only be used in conjunction with service of alcoholic beverages between the following hours: 11:00 AM to 12 midnight, Monday through Thursday, from 11:00 AM to 1:00 AM on Friday and Saturday, and from 8:00 AM to 10:00 PM on Sunday.

4. Wahoo Willies, 1021 Estero Boulevard, April 2007.

- a. Hours of operation are limited to Monday through Sunday from 11:00 AM to 11:00 PM.
- b. Outdoor music is prohibited, except for playing pre-recorded music at low volume from 11:00 AM until 9:00 PM.
- c. Indoor music and/or entertainment are limited to the hours of 11:00 AM to 11:00 PM.



5. Yucatan Beach Stand, 250 Old San Carlos Boulevard, August 2007.
  - a. Outdoor music or similar entertainment is prohibited.
  - b. Indoor music and/or similar entertainment is restricted to occur only within the enclosed wall and further restricted to the following hours: 11:00 AM to 11:00 PM Monday through Thursday; from 11:00 AM to 12 midnight on Friday and Saturday, and from 11:00 AM to 10:00 PM on Sunday.
  - c. Hours of operation during which alcoholic beverages may be served on premises are limited to 11 AM to Midnight, Monday through Thursday, from 11:00 AM to 1:00 AM on Friday and Saturday, and from 11:00 AM to 10:00 PM on Sunday.
  
6. Plaka Restaurant, 1001 Estero Boulevard, June 2007
  - a. Hours of operation are Monday through Sunday from 7:00 AM to 12 midnight.
  - b. Outdoor music is prohibited except for playing pre-recorded music at low volume from 11:00 AM to 9:00 PM.
  - c. Indoor music and/or entertainment restricted to the hours of 11:00 AM to 11:00 PM.
  
7. Nemo's on the Beach, 1154 Estero Boulevard, July 2010
  - a. Consumption on premises is limited to the interior of the first floor, the front porch and rear patio.
  - b. Music and other audible entertainment are allowed only from 10:00 AM to 10:00 PM each day in the outdoor seating areas.
  - c. Sales, service and consumption of alcoholic beverages are allowed only between the hours of 7:00 AM and 2:00 AM each day
  
8. Mermaid Lounge & Liquors, 1204 Estero Boulevard, June 2011
  - a. Sales, service and consumption of alcoholic beverages outdoors are permitted only from 9:00 AM to 2:00 AM each day.
  - b. Music and other audible entertainment are allowed in the outdoor seating areas only from 11:00 AM to 10:00 PM Sunday through Thursday, and 11:00 AM to 11:00 PM Friday and Saturday. However, music or other audible entertainment is prohibited in the front patio area unless approved under a special event permit.
  
9. Cermak's Surf Club, 1167 Estero Boulevard, September 2011
  - a. Sales, service and consumption of alcoholic beverages outdoors are permitted only from 9:00 AM to 2:00 AM each day.
  - b. Music and other audible entertainment are allowed in the outdoor seating areas only from 11:00 AM to 9:00 PM each day.



10. La Ola Restaurant, 1035 Estero Boulevard, December 2012

- a. Hours of operation are from 7:00 AM to 2:00 AM, seven day a week.
- b. Live music is permitted from 1:00 pm to 11:00 PM, seven days a week. This was an extension of the hours approved in October of 2011, which limited live music to the hours of 3 PM and 9 PM each day.

SUMMARY

Among the six special exception approvals that specifically allowed outdoor music or entertainment, the Town placed the following limitations:

- Allowed only until 9 PM (3)
- Allowed only until 10 PM (1)
- Allowed until 11 PM (1) Friday and Saturday only; other days limited to 10:00 PM
- Allowed until 11 PM (1) Monday through Saturday; limited to 10:00 PM on Sunday

In addition, with one exception, each approval of outdoor music required that the music be non-amplified and either pre-recorded background or low volume music, or in the case of live music that it be acoustical, non-amplified music. In fact, in most cases even indoor music was required to be non-amplified, although, for the most part the music was allowed until 11 :00 PM and sometimes later.

One recently approved special exception allows outdoor televisions from 11:00 AM to 11:00 PM but still prohibits live music on the outside deck.



# COMPREHENSIVE PLAN ASSESSMENT

The Comprehensive Plan sets the basic framework for all development throughout the Town. All development regulations must be consistent with and implement the Goals, Objectives, and Policies (GOPs) of the Comprehensive Plan. Review of the Comprehensive Plan has revealed nothing that needs to be changed or added to ensure that the establishment of an Entertainment District is consistent with the Goals, Objectives and Policies of the Plan as adopted. In addition, the establishment of an Entertainment District and associated development regulations should act to implement and support the following Policies in the various elements of the Comprehensive Plan.

TOWN OF  
FORT MYERS BEACH  
COMPREHENSIVE PLAN



- INTRODUCTION – 1
- ENVISIONING TOMORROW'S FORT MYERS BEACH – 2
- COMMUNITY DESIGN ELEMENT – 3
- FUTURE LAND USE ELEMENT – 4
- COASTAL MANAGEMENT ELEMENT – 5
- CONSERVATION ELEMENT – 6
- TRANSPORTATION ELEMENT – 7
- UTILITIES ELEMENT – 8
- STORMWATER MANAGEMENT ELEMENT – 9
- RECREATION ELEMENT – 10
- CAPITAL IMPROVEMENTS ELEMENT – 11
- HOLDING ELEMENT – 12
- HISTORIC PRESERVATION ELEMENT – 13
- INTERGOVERNMENTAL COOPERATION ELEMENT – 14
- PROCEDURES AND MONITORING – 15

**The Community Design Element** includes a description of the Downtown Core Area and identifies its four major geographic components. While more detailed information provided in subsequent sections of this Report will support a conclusion as to the physical boundaries of the Entertainment Area, the existing character of the Core indicates that it will likely include the following areas: Old San Carlos Boulevard, Times Square, and Crescent Street and the properties within this context bordering Estero Boulevard.

Policy 3-D-1            The town shall create a Downtown Redevelopment Agency to assist the Main Street program in revitalizing downtown as a lively, inviting, comfortable, and safe public environment.

**Comment:**        **A properly regulated Entertainment District would aid in revitalizing and enlivening the area.**

Policy 3-D-4,iv        Promote the function of Old San Carlos as a pedestrian spine linking Times Square and the marina by implementing public sidewalks and major crosswalks designed to work in conjunction with arcades or plazas located on private property.

**Comment:**        **Provisions for outdoor entertainment could enhance the use of private arcades and plazas.**



## Future Land Use Element

Policy 4-A-2      The Town of Fort Myers Beach values its vibrant economy and walkable commercial areas. Through this plan, the town will ensure that new commercial activities, when allowed, will contribute to the pedestrian oriented public realm.

**Comment:      Provisions for outdoor entertainment could enliven the walkable areas of the Entertainment District.**

Policy 4-A-3      The town shall protect residential neighborhoods from intrusive commercial activities.

**Comment:      Noise regulations for properties within the Entertainment District will be included specifically to protect nearby residential properties as well as other businesses from inappropriate noise levels.**

Policy 4-C-3      COMMERCIAL LOCATIONS: When evaluating proposals for new or expanded commercial uses in categories where they are permitted, the following principles shall apply:...

vi. The neighborhood context of proposed commercial uses is of paramount importance. The sensitivity of a proposed commercial activity to nearby residential areas can be affected by:

a. the type of commercial activities (such as traffic to be generated, hours of operation, and noise);

**Comment:      The provisions of the Entertainment District will include provisions to properly regulate uses such that hours of operation and noise will not adversely affect nearby residential uses.**

Policy 4-C-11      SANTOS ROAD: The town is interested in considering land-use alternatives for parcels bordering Palermo Circle, Santos Road, and Estero Boulevard. Alternatives may include: Santos Road being added into the pedestrian zone; limited retail on the ground floor along Santos, with shared off-site parking; better buffering of existing parking and refuse areas; and a clear separation between all commercial uses and the residential areas on Palermo Circle. These options would be explored by a privately-funded but town-initiated planning process, with full involvement of affected and nearby landowners.

**Comment:      This area is adjacent to the Palermo residential neighborhood and the Entertainment District may not reach this far south.**



**The Transportation Element** emphasizes a mobility-oriented strategy with a variety of travel made options in order to battle traffic congestion in the Town.

**OBJECTIVE 7-D VARIETY OF TRAVEL MODES** — The Town of Fort Myers Beach shall make efforts every year to improve mobility for its residents and visitors, striving for a balanced transportation system that allows safe movement even during peak periods of traffic congestion. These efforts may include further subsidies to improve the trolley system, the use of impact fees to improve sidewalks, and creation of critical links on the hidden path system.

**POLICY 7-D-1 ARRIVE WITHOUT A CAR:** Fewer vehicles would be driven to Fort Myers Beach if scheduled airport shuttle service were available. The town shall encourage this service and the designation of a central drop-off point that could include a trolley stop and taxi stand.

**POLICY 7-D-2 IMPROVE TROLLEY SERVICE:** Trolley ridership increases when service is more frequent and when fares are low or free, yet no long-term funding or operational plan has been developed for providing higher service levels. Practical measures to improve trolley usage include:

- i. Recurring subsidies from tourism sources so that service can be enhanced and congestion minimized during heavy seasonal traffic;
- ii. Pull-offs at important stops along Estero Boulevard so that passengers can safely board and traffic is not blocked excessively; these pull-offs could be built during other improvements to Estero Boulevard or required by the Land Development Code during the redevelopment process.
- iii. Clear signs at every stop with full route and fare information;
- iv. Bus shelters at key locations, with roofs, benches, and transparent sides;
- v. Replacement of the existing trolley buses with clean-fuel vehicles so that businesses won't object to having trolleys stop at their front doors; and
- vi. Accommodation of the special needs of the transportation disadvantaged.



POLICY 7-D-3

**ALTERNATE TRAVEL MODES:** The town shall support alternatives to car travel to free up road capacity for trips that do require a car. Public funding sources shall include county/state gasoline taxes and road impact fees. The town shall modify its road impact fee ordinance by 1999 to allow these fees to be spent (within legal limits) on capital improvements that relieve road congestion, such as better sidewalks, trolley improvements, and off-island parking areas. The town seeks to at least double the usage of the trolley system by the year 2001 (from its 1996 total ridership level of 238,754).

**Comments:** The creation of an Entertainment District emphasizes a unified destination area that supports interspersed connectivity among like businesses. More public spaces and pedestrian oriented pathways are enhanced by the endorsement of alternate travel modes.

**Recreation Element**

Policy 10-C-1

**LYNN HALL MEMORIAL PARK:** ...

ii. In cooperation with the town's Main Street Program, encourage entertainment that appeals to residents and visitors while reinforcing the downtown as a recreation and entertainment destination. These could include musical or art-in-the-park events, community festivals, and other family-oriented special events.

**Comment:** Private entertainment venues can contribute if properly encouraged and controlled.



## REVIEW OF VARIOUS NOISE AND ENTERTAINMENT REGULATIONS

While there are a large number of communities throughout Florida and the nation that have ordinances governing noise in general, and frequently specifically out-door entertainment, we have provided summaries of three communities with regulations of varying severity and complexity.

### City of Orlando, FL

Chapter 42 of the Orlando Code of Ordinances includes provisions regulating noise levels in the City. It also includes provisions and standards addressing noise levels that apply specifically to Orlando's "Downtown Entertainment Area". These are shown below and include provisions proposed under Ordinance 2013-14.

1. Maximum allowable noise levels

Weekdays from 7:00 AM to 11:59 PM:	75dBA
Weekdays from 12 midnight to 7:00 AM:	70dBA
Weekends from 7:00 AM to 1:59 AM:	75dBA
Weekends from 2:00 AM to 7:00 AM:	70dBA



2. Location: Sec. 42.04 states *"No person shall produce, cause to be produced, or allow to be produced, by any means, any noise within private property which, when measured fifty (50) feet from **the source of the noise or at the real property line of the property generating** said noise, exceeds the applicable sound levels..."*
3. Method of measurement: The maximum noise level above may be exceeded only for a period of less than one minute in any given 15 minute period.
4. The following actions are specifically prohibited in the Downtown Entertainment Area:
- Playing any radio, phonograph, television, electronic device or any musical instrument or operating a sound-amplification device in such a manner as to unreasonably disturb the peace, quiet, comfort and repose of neighboring inhabitants or ordinary sensibilities, or at any time louder than is necessary for convenient hearing for the person or persons who are in the room, vehicle, or chamber in which such machine, instrument, or device is operated.
  - When using such machine, instrument, speaker, or device inside of a building, structure, room, chamber, or other similarly defined area, it may not be placed in a manner that it faces or directs the sound toward any open entrance or exit, or any window or other similar opening in the building, structure, room, chamber, or other similarly defined area.
  - Operating any such machine, instrument, speaker or device between the hours of 12:00 midnight and 7:00 AM on weekdays and 2:00 AM and 7:00 AM on weekends in such a manner as to exceed the sound limits identified in item 1, above.



5. Noise standards in the Downtown Entertainment Area are less stringent than for other areas of the City. The use of loud speakers or other sound amplification devices are generally forbidden to be used out of doors between the hours of 10:00 PM and 7:00 AM. However, they may be used in the Downtown Entertainment Area between 7:00 PM and 12 midnight on weekdays and between 7:00 PM and 2:00 AM on weekends if they receive a permit from the Chief of Police or the City's Permitting Division.
6. If loud speakers, or amplifies are to be used out of doors, submittal of an application and plan are required which includes the location, hours of operation, description of the device and decibel level.
7. If the permit is for permanent or continuous use as opposed to use for a temporary event, the permit is for twelve months and allows for renewal. If the conditions for use of the loud speakers or amplifiers differ from the original permit, the permit process begins all over. During consideration for renewal, the City may consider the number of citations issued during the prior 12-month period. Furthermore, the City will revoke a permit upon issuance of a third citation involving loud speaker or sound amplification devices.

### City of Wilmington, NC

Chapter 6, Article II, of the City of Wilmington, NC Code of Ordinances includes provisions regulating noise levels in the City It also includes provisions and standards addressing noise levels that apply specifically to the "Downtown area." These are shown below.

1. Levels in excess of the following are considered a "noise disturbance" and are not allowed:

Monday – Thursday from 7:00 AM to 11:00 PM:	75dBA
Monday – Thursday from 11:00 PM to 7:00 AM:	65dBA
Friday from 7:00 AM to 12 midnight:	75dBA
Friday from 12 midnight to 2:00 AM Saturday:	70dBA
Saturday 2:00 AM to 7:00 AM	65dBA
Saturday from 7:00 AM to 12 midnight	75dBA
Saturday from 12 midnight to Sunday 2:00 AM	70 dBA
Sunday from 2:00 AM to 7:00 AM	65dBA
Sunday from 7:00 AM to 11:00 PM	75dBA

2. Outdoor entertainment: *"In the case of outdoor entertainment, including live or recorded speech, music, or other sound, decibel level of such activity must not exceed the maximum noise levels allowed above when **measured at a point one hundred (100) feet away from the source of the sound and beyond the boundary line of the premises from which the noise emanates.**"*
3. Commercial entertainment Sec. 62.9.1(a) states:



“a. *No commercial establishment shall play, operate, or cause to be played or operated, any amplified or nonamplified musical instrument or sound reproduction device in a manner that causes a noise disturbance on any neighboring premises or public area. For the purposes of this section, a noise disturbance shall be presumed to exist where the sound or noise caused by any activity described herein is plainly audible within any occupied structure not the source of the sound or noise or within any public area **more than sixty-six (66) feet from the property line of the commercial establishment** during the days and times set forth below:*

- (1) *For structures located in residential zoning districts, this presumption shall be effective at all hours.*
- (2) *For structures and public areas located in nonresidential zoning districts, this presumption shall be effective from 11:00 PM until 7:00 AM (except that the beginning time for the presumption shall be 1:00 AM on Saturday and Sunday)."*

### **City of Ocean Springs, MS**

The 2012 ordinance proposing a new Section 15-16 of the Ocean Springs, MS Code of Ordinances contains the following provisions addressing outdoor sounds:

1. It specifically prohibits the use of any sound amplification or producing device or similar equipment outdoors on the premises of a commercial establishment on the following days and times:

Weekdays (Sunday night through Friday morning) between 11:00 PM and 8:00 AM  
Weekends (Friday night through Sunday morning) between 11:59 PM and 8:00 AM

2. *Sound amplification or producing device or similar equipment* is defined as a “radio, receiving set, phonograph, stereo, tape player, cassette player, compact disc player, “boom box”, loudspeaker, karaoke player, drum, juke box, nickelodeon, musical instrument, sound amplifier, or other device which produces, reproduces, or amplifies sound.”

### COMMENTS:

The restrictions imposed in Ocean Springs are simple; although perhaps too strict for Fort Myers Beach. However, we believe the WHEREAS clauses and statements in the Ordinance provide a sound rationale for either prohibition of such outdoor sound or the limitation of such sounds to specific decibel level and during specific days and hours.



# INTERVIEWS WITH BUSINESS OWNERS WITHIN THE POTENTIAL ENTERTAINMENT DISTRICT

## SUMMARY OF INTERVIEWS

Throughout a period of several months interviews were held with Fort Myers Beach business owners. The purpose was to gather information to determine if creating an Entertainment District would be a viable option for the downtown area businesses. Interviewees included representatives from eating and drinking establishments with or without entertainment, retail stores, hotels/motels and short term rentals. The Executive Director of the Chamber of Commerce was also interviewed and a copy of the interview questions is included in the appendix of this report as well as a table summarizing the comments.

When the interviewees were asked “*What do you see as the top three issues for providing entertainment on Fort Myers Beach?*”; the answers included the following:

*parking*

*open container issues*

*entertainment is a bonus*

*people follow certain entertainers*

*volume of music allowed; level the playing field*

*measure noise fairly*

*public drunkenness*

*special events should be allowed*

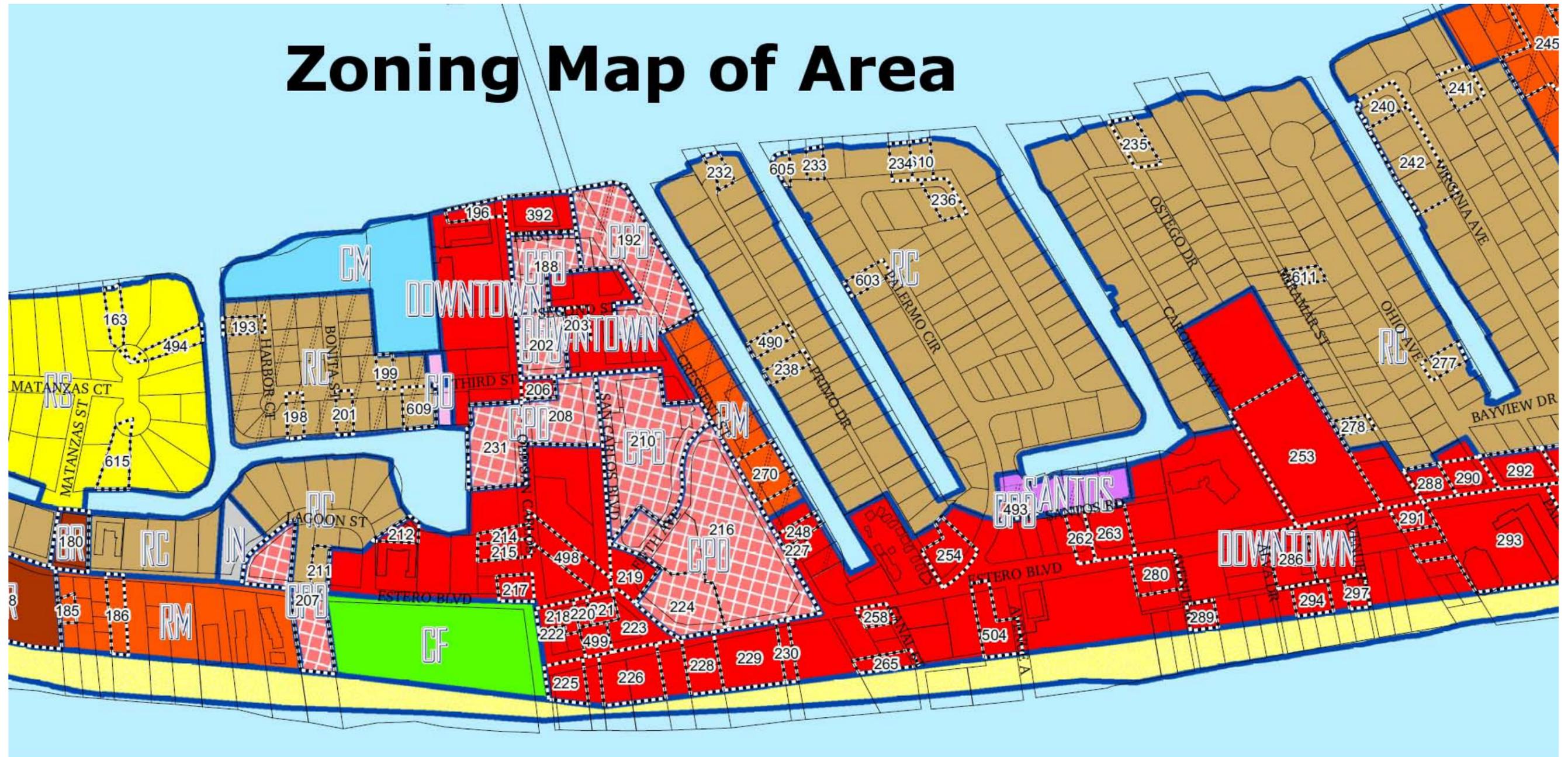
*noise can be controlled; late hours not needed*

*allowing entertainment without excess regulation*

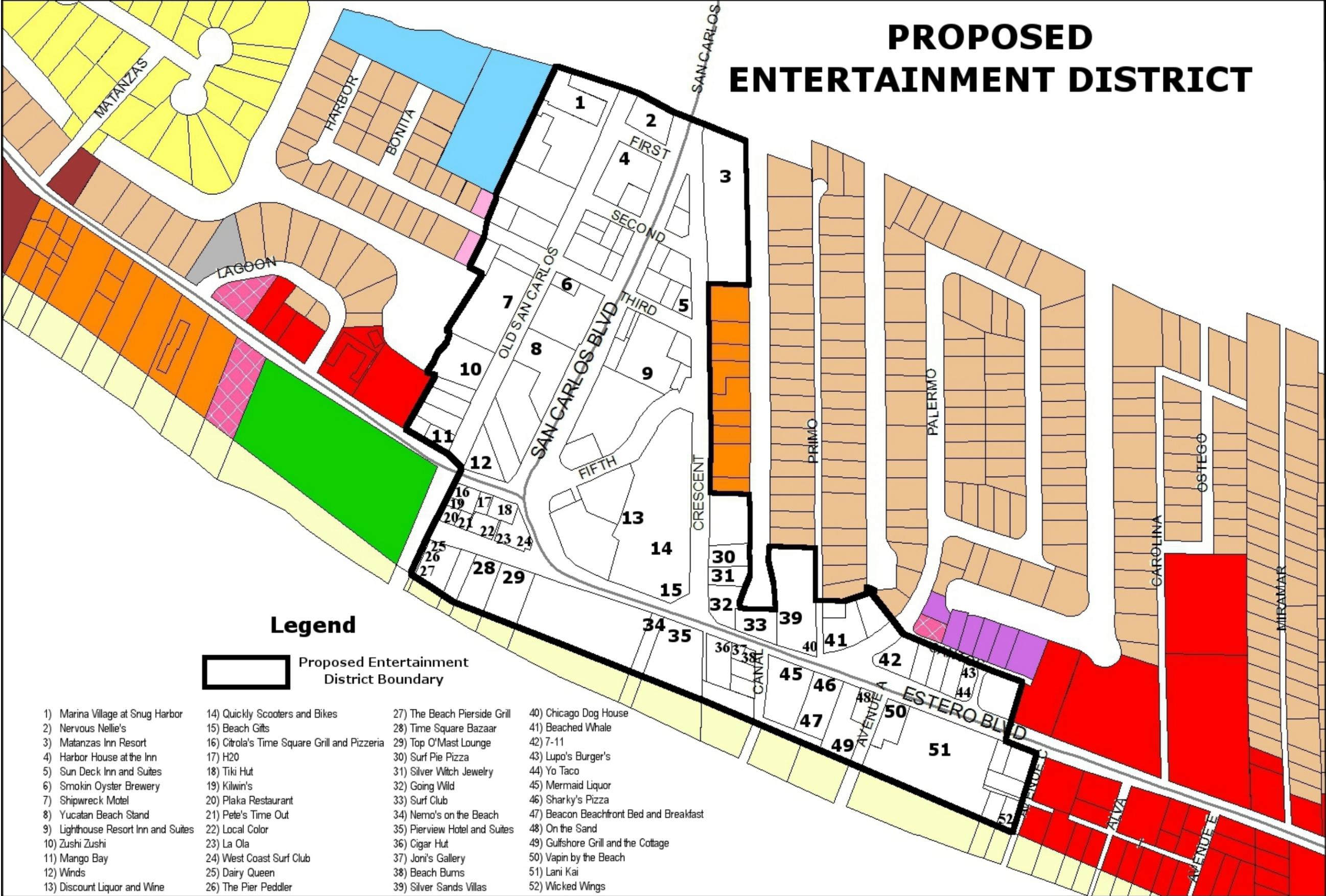
The value of “event” weekends was felt to be fairly important to most of the business representatives interviewed. A couple of respondents stated that too much activity caused some customers to not patronize their business. A follow-up question asked “*If you were included in the proposed Entertainment District, what is your feeling about a “special assessment” created to pay for Special Events within the ED?*” While some thought a special events coordinator was a good idea several were opposed to paying for it. Most respondents felt that if there was a special event coordinator it should not be a governmental position.



# Zoning Map of Area



# PROPOSED ENTERTAINMENT DISTRICT



### Legend

 Proposed Entertainment District Boundary

- |                                     |  |                               |   |
|-------------------------------------|--|-------------------------------|---|
| 1) Marina Village at Snug Harbor    | 14) Quickly Scooters and Bikes               | 27) The Beach Pierside Grill  | 40) Chicago Dog House                   |
| 2) Nervous Nellie's                 | 15) Beach Gifts                              | 28) Time Square Bazaar        | 41) Beached Whale                       |
| 3) Matanzas Inn Resort              | 16) Citrola's Time Square Grill and Pizzeria | 29) Top O'Mast Lounge         | 42) 7-11                                |
| 4) Harbor House at the Inn          | 17) H2O                                      | 30) Surf Pie Pizza            | 43) Lupo's Burger's                     |
| 5) Sun Deck Inn and Suites          | 18) Tiki Hut                                 | 31) Silver Witch Jewelry      | 44) Yo Taco                             |
| 6) Smokin Oyster Brewery            | 19) Kilwin's                                 | 32) Going Wild                | 45) Mermaid Liquor                      |
| 7) Shipwreck Motel                  | 20) Plaka Restaurant                         | 33) Surf Club                 | 46) Sharky's Pizza                      |
| 8) Yucatan Beach Stand              | 21) Pete's Time Out                          | 34) Nemo's on the Beach       | 47) Beacon Beachfront Bed and Breakfast |
| 9) Lighthouse Resort Inn and Suites | 22) Local Color                              | 35) Pierview Hotel and Suites | 48) On the Sand                         |
| 10) Zushi Zushi                     | 23) La Ola                                   | 36) Cigar Hut                 | 49) Gulfshore Grill and the Cottage     |
| 11) Mango Bay                       | 24) West Coast Surf Club                     | 37) Joni's Gallery            | 50) Vapin by the Beach                  |
| 12) Winds                           | 25) Dairy Queen                              | 38) Beach Burns               | 51) Lani Kai                            |
| 13) Discount Liquor and Wine        | 26) The Pier Peddler                         | 39) Silver Sands Villas       | 52) Wicked Wings                        |

## MODEL ORDINANCE

### A. ITEMS TO BE INCLUDED IN THE ENTERTAINMENT DISTRICT REGULATIONS

#### 1. Separation requirements “consumption on premises”.

Establishments with consumption on premises should not need to be separated by 500 feet from short term rentals, as these are not truly residential uses but commercial vacation resort uses. Either the separation distance should be eliminated for short term rentals of 30-days or less, or the distance should be reduced; preferably the former.

#### 2. Maximum allowable noise levels.

- a. The current levels are too restrictive:

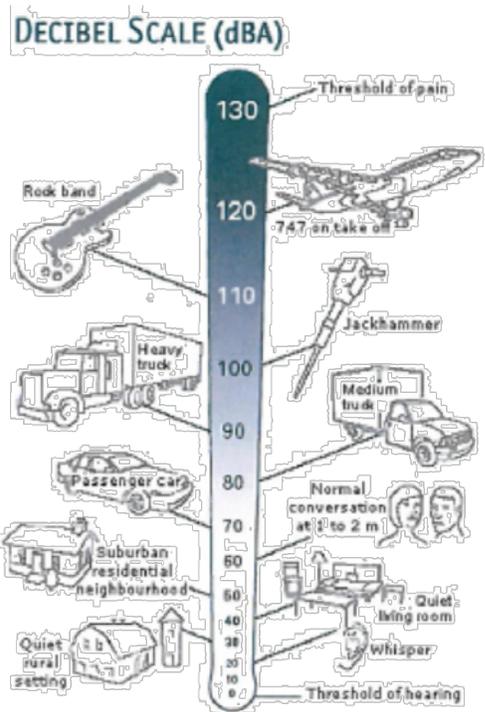
Receiving residential properties:  
 66 dBA from 7:00 AM to 10:00 PM  
 55 dBA from 10:00 PM to 7:00 AM

Receiving commercial properties:  
 72 dBA from 7:00 AM to 10:00 PM  
 65 dBA from 10:00 PM to 7:00 AM

- b. In recognition of the intended nature of the Entertainment District, we suggest noise limits be changed to:

Weekdays  
 7:00 AM to 10:59 PM: 75dBA  
 11:00 PM to 7:00 AM: 70 dBA

Weekends  
 7:00 AM to 12:59 AM: 75dBA  
 1:00 AM to 7:00 AM: 70 dBA



With portions of the Entertainment District lying adjacent to or nearby to properties zoned RM and RC, a lower noise threshold could be set at the property lines of residential properties intended for occupancy of more than 30 days; perhaps 65 dBA after 11:00 PM on weekdays and after 1:00 AM on weekends.

### **3. Points of measurement.**

When determining compliance with the noise limitations, the measurement(s) should be taken from a point 100 feet away from the source of the sound and beyond the boundary line of the premises from which the sound emanates.

### **4. Method of measurement.**

The maximum noise level should be allowed to be exceeded for a cumulative period of less than one minute in any given 15-minute period.

### **5. Special regulations on loudspeakers and other outdoor devices.**

Based on comments by the Town Attorneys and our review of the current noise regulations, we suggest that sound emanating from loudspeakers and other such devices should be subject to the standard noise limits just as any other source of noise.

### **6. Limitations on outdoor music and entertainment.**

While the noise standards for outdoor music or entertainment should be the same as those for other sources of noise that may be associated with an entertainment establishment, we do believe it is appropriate to limit the times that outdoor entertainment or music is allowed. We suggest that outdoor entertainment and outdoor music should be prohibited after 10:00 PM on weekdays (Sunday night through Thursday night) and after midnight on Friday and Saturday nights.

- a. Although the sale, service, and consumption of alcoholic beverages on the premises could still be allowable only after approval of a Special Exception, outdoor music and entertainment should be a permitted use within the Entertainment District.
- b. Noise standards for outdoor music or entertainment should be the same as those for other sources of noise that may be associated with an entertainment establishment. However, we believe it is appropriate to limit the times that outdoor entertainment or music is allowed. We suggest that outdoor entertainment and outdoor music should be prohibited after 10:00 PM on weekdays (Sunday night through Thursday night) and after midnight on Friday and Saturday nights.

Again, recognizing those instances where entertainment businesses may be adjacent to or nearby residential uses, outdoor entertainment within 50 feet of such properties should be curtailed at an earlier hour, perhaps 9:00 PM on weekdays and 11:00 PM on weekends.

### **7. Indoor entertainment.**

When using a loudspeaker or other sound amplification device, it should not be placed in a manner such that it faces or directs the sound toward any open entrance or exit, or any window or other similar opening in the building, structure, room or other similarly defined area.



**B. EFFECTS OF PROPOSED REGULATIONS UPON PREVIOUSLY APPROVED SPECIAL EXCEPTIONS**

1. Previously approved special exceptions for the sale, service, or consumption of alcoholic beverages on the premises should remain unaffected by the new regulations proposed for the Entertainment District. However, aspects of prior special exception approvals that prohibit or more severely limit outdoor music or entertainment, or noise limits that are more restrictive, than the new regulations and noise limits applicable to the Entertainment District should be superseded by the new Entertainment District regulations.
2. In the event a property is operating under a previously approved special exception that was less restrictive than the limitations or prohibitions imposed under the new Entertainment District regulations, that business should be “grandfathered” and allowed to operate as previously approved under the Special Exception.



# Appendix A

## ENTERTAINMENT DISTRICT BUSINESS SURVEY

1) Name of Business: \_\_\_\_\_

Address of Business: \_\_\_\_\_

2) Type of Business: \_\_\_\_\_

3) Name of Contact: \_\_\_\_\_

4) Contact phone/email: \_\_\_\_\_

5) Business Hours of Operation: \_\_\_\_\_

6) Business Days of Operation: \_\_\_\_\_

7) Types and sources of noise, if any, associated with Business (i.e recorded music, live music, machines, generators, people): \_\_\_\_\_  
\_\_\_\_\_

8) Does the Business have outdoor and/or indoor entertainment? \_\_\_\_\_  
\_\_\_\_\_

9) What hours is the outdoor and/or indoor entertainment allowed to operate? \_\_\_\_\_  
\_\_\_\_\_

10) Seating capacity of Business: \_\_\_\_\_

11) What Hours is Alcohol Consumption on Premises permitted at the Business: \_\_\_\_\_

12) How do the majority of your customers get here? \_\_\_\_\_  
\_\_\_\_\_

13) For those customers that drive, where do they typically park? \_\_\_\_\_

14) Is there ever a parking issue that affects your business? \_\_\_\_\_  
\_\_\_\_\_

15) Any comments/concerns/issues related to noise, parking, COP? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

16) What has been your experience with local government? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

17) What is the value of event weekends to your business? \_\_\_\_\_

\_\_\_\_\_

18) What do you see as the top three issues for providing entertainment on Fort Myers Beach? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

19) Currently, activity on the beach begins to shut down around 10:00. Is that good or bad? \_\_\_\_\_

\_\_\_\_\_

20) What has been your experience with code enforcement and/or law enforcement? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

21) How do you keep things active in the off season? Or do you prefer a slow summer/fall in which to take a break and shut down for awhile? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

22) If you were included in the proposed Entertainment District, what is your feeling about a “special assessment” created to pay for Special Events within the ED? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Appendix B

Entertainment District Business Survey Response Table													
Questions	Businesses												
	A	B	C	D	E	F	G	H	I	J	K	L	M
Type of noise assoc. with business	1-5 & 6-10 Live music, and MUSAK (piped in) between sessions, people talking. The live entertainer is only a single performer, not a band.	Wednesday to Sunday live music. Indoor ONLY	Music, recorded and live, people. This business is an outdoor only venue, no indoor seating	Live and recorded music 11 – 11, and people	live music upstairs, sometimes downstairs	Usually, not much	occasional outdoor acoustic act	Bar is covered but basically open air	Not much when the door is closed, which it generally is	Live music. Weekend band shared by some businesses	No, but entertainment (music) should be allowed. May want live music	Recorded and live music	None from residents; clear guidelines for noise control are needed; some residents have left because of the noise.
Does the Business have outdoor/indoor entertainment?	both	Indoor Only	ONLY outdoor	YES	outdoor	Occasionally outdoors	outdoor	2 or 3 piece band	One guy playing for patrons inside	Under roof but not enclosed	No	both	
Allowed entertainment hours of operation	11-11	10 - 1:30 AM	1 pm to 11 pm	6-10 LIVE Entertainment, one man entertainer	5-9 pm	Cut-off at 10 because of residences nearby		Till 10	Same as operation times	5 PM - Midnight	n/a	Outdoor music to 11PM	
Allowed COP hours of operation	11 to 11	food, all day	he has a 4COP license till 2 am	11-11	till 2am	no alcohol sold on premises		usually close 12:30 to 1	alcohol till 2			11-Midnight outside	
How do the majority of customers arrive?	Walk, either from Time Square or off Beach	Drive/ walk	Walk only. Located in Time Square	Mostly walk	Boat, walk, car, hard to tell....	Drive	Parking for boats and cars	Hard to tell	Walk up	Walk and auto	Parking lots or walk	Car & walk	Car
Where do they typically park?	Anywhere parking is available	Parking lot; 44 parking spaces	NONE	5 parking spaces. Pay parking across the street or metered parking along the street, which stops at 6PM	Parking lot out front	1 space per unit	Parking lot on premises, boat slips out back	Parking lot on property, street parking nearby	Doesn't have own lot, street parking...	Along Old San Carlos		Lot nearby	Parking lot near building
Parking issues that affect business	NO	NO	NO	None. Have been at same location for 13 years.	Could use more parking, like everyone else on the beach	Would like more spaces	Parking affects every business on the beach	Like to see parking garage, possibly behind the McDonalds lot.	Need more parking for everyone	sometimes		Not really	Over crowded at special events; need to make sure access is given when special events occur.

Entertainment District Business Survey Response Table

Questions	Businesses													
	A	B	C	D	E	F	G	H	I	J	K	L	M	
Comments/concerns/issues related to noise, parking and/or COP	The owner is very mindful of noise level as people do not want to sit near the entertainer if the volume is too loud, leaving valuable tables open. Plus it is hard for the servers to hear the customers if the music is too loud. He has had problems in the past with a business to the South of him having his music so loud that his entertainer could not be heard. The other business' music has competed with his. His entertainer had to go ask the band to turn it down.	No problems. We do our own thing. Stay out of trouble and do our own thing. We don't cause problems.	Would like to have an "open container" rule to allow for it in the Time Square area. People love to walk to the pier with a glass of wine/drink to go watch the sunset. Not allowed. Also he feels there is no good signage or indication of "Times Square". Needs a gateway or some indicator of being in Times Square. Lack of signage. No theme or image of TS. Poor lighting in TS. Too dim at night - liability. Make lighting better. Also the Town should be more tolerant to street performers. They add entertainment and make it livelier.	The parking meter enforcement company needs to be a bit friendlier and tourist friendly. They issue tickets even when the person is approaching car. They should be parking ambassadors rather than parking Nazis. Free parking should start at 5 rather than 6. ED should not go past Lynn Hall Park.	Some follow the rules, some don't. It's tough when your neighbor's music is too loud. Maybe make a rule about the direction you speakers face...						Normal noise is over allowed decibel range.		Supposed to be a destination for family fun	Noise must be controlled; access for residents must be maintained.
What has been your experience with local government?	Nice people, but permitting or anything takes way too long. Can't get anything done. Very poor communication. Calls are never returned. Very challenging	"FINE"	Too difficult. Need permit for EVERYTHING. Never call back. Need to be a bit more relaxed.	Very slow, non-responsive, Nice people, makes everything so difficult, too complicated, where everyone ends up getting mad. Hard to get return phone calls.	Very positive	Different rules for different people. Some people allowed to serve at times others aren't. Wasted money on the Mound House and Newton House, which have very limited hours, can't go inside. Very Anti-business. They gave the business a permit for a sign and then, 6 months later, was told it would need to come down in 10 years.	Helpful	Positive, they like Terry and Walter	Typical small town politics	Can be more consistent. Higher officials seem to listen better than in the past.	Nice people	Need to treat special events routinely. Staff can be over bureaucratic in reviews.		
What is the value of event weekends to your business?	Detriment to the business. For him, it draws AWAY from the business	Good	90% of the time GOOD	Pirate Festival, Shrimp festival and the like...GOOD. Good for business. Don't want "open container" rules all the time but during special events good idea.	Big special events don't do anything for them. Traffic directed the other way. Hard for people to get to them	What is the value of event weekends to your business? They are usually booked solid regardless but event weekends are good.	Very positive. They do the turkey testicle festival for a food bank fundraiser	Very positive	Very important. Would like to see a situation like downtown Fort Myers, i.e. monthly events. Why can't the town build a band shell?	Important	Important	Very valuable	People can't get in at times; walk in through Moss Marina.	

Entertainment District Business Survey Response Table

Questions	Businesses												
	A	B	C	D	E	F	G	H	I	J	K	L	M
Top three issues for providing entertainment on the beach	Entertainment is a bonus to the customers. People "follow" certain entertainers	None, we do our own thing.	Open container issues.	Parking and open container issue.	Volume of music. "Level the playing field"	90% of the problems come from the Lani Kai			People on south side of island stifling everything. They want to see things quieter than those at the north end.	Allowing entertainment w/o excess regulation; measure noise fairly; special events should be allowed.	Noise can be controlled – late hours not needed; No drinking with open containers; Permitting should be routine	Allowing Old San Carlos to be active district. Hours, noise levels can be controlled	Noise – need a clear definition of noise levels; Parking – hasn't been a complaint lately; Public drunkenness.
Currently, activity on the beach begins to shut down around 10. Is that good or bad?	After 9:30 pm sales drop off anyway. "Nothing good happens after midnight"		For big holidays like New Years Eve and 4 <sup>th</sup> of July, would like to see till 4am rather than 2. And those who want to stay open can.	It's ok the way it is. His business is not real late night but doesn't want to be late night either.	Doesn't want to see more restrictions but, generally, nothing good happens after midnight.	Actually, by her business, things go much later. Bars can be spilling out into the street around 11:30...		Things are good, but more business would be good too	More activity would be better	Weekend can be longer		Little later not a problem	10PM music tops in
What has been your experience with code enforcement and law enforcement?	Nit-picky but doing their job. Would like better communication with Government.	None	No problems. The musicians need to plug into the business sound system and owner controls the volume. Wants his music to be background music, so people can talk and enjoy themselves. Musician cannot control the volume. Very mindful of volume. ** The owner is European so he has a different attitude about business than what you typically see.	No problems. Got a complaint about music a couple times. Inconsistent about where it is measured from. But a loud radio in car, no limit to volume.	No experience with code enforcement. Law enforcement can be overzealous. Sheriff road blocks are a huge problem.	Law enforcement is good. Not so much with code enforcement. Selective and unfair enforcement. Had a code enforcement officer crawl through a window, told her she had to pull a permit to change a toilet.	Overzealous law enforcement. Looking and shining flashlights into people's cars while in traffic.	All positive	Very positive with law enforcement. Code enforcement is reasonable	Have gotten better.	Getting better	Okay, can be more of a system	Will respond timely
How do you keep things active in the off season? Or do you prefer a slow summer/fall in which to take a break and shut down for awhile?	Or do you prefer a slow summer/fall in which to take a break and shut down for awhile? Rather be slammed and very busy all the time. Going to hire a clown to make balloon animals and such during off season. Try to think out of the box.	Same year round.	Same year round. Except off season entertainer 1x per day; during season 2x per day.	Same SOP year round.	Things slow down. They do get some improvements done during that time but it would be nice to see more business in the off season.	Always active, no slow period		It's ok to have a slower period for improvement projects, but they try to have competitive prices to keep the locals coming during the off-season	Very tough in the off season. Please encourage more activity	Pretty much	Somewhat		

Entertainment District Business Survey Response Table

Questions	Businesses												
	A	B	C	D	E	F	G	H	I	J	K	L	M
What are your feelings regarding a special assessment that could be created to pay for special events within the ED?	Not opposed if paid into fairly. Good idea for a Events coordinator.	Not interested. We do our own thing during events.	"PERFECT" Would love an events manager. FMB has a great park and is not used enough. Should have art festivals, music festivals, farmers market, the sidewalk in TS could be a chalk sidewalk where artists could draw or children. There should be a FREE shuttle bus/cab service so people don't drive.	He'd be "ALL IN!!!" Event Coordinator – YES!!! But who would be their boss?	If it was done equitably, it could be beneficial.	Opposed. Have a look at my tax bill!! Take it out of the money being spent on the mound house.	Open to the idea. Make it equitable	Not opposed	Bad idea. Very opposed. Doesn't want to see government involved in any more than it has to be. Doesn't want the government collecting anymore money.	Not necessary	No, private enterprise can step in	No not needed	No, for extra fees
Additional Comments	Lots of turtle issues impact this business. Can't have nice picnic tables in the beach COP area as they are too heavy and need to be brought in nightly. A very nice neon sign for the business had to be removed for a dimmer, low light one. Lighting outdoors must be kept so low it is hard for the customers to read the menus during turtle season.			Would think it might be cool to see boring fountain by Nervous Nellie's become an interactive fountain to attract people and children. Would be a way to tie the back bay and pier area together. Give people a reason to go to the other end of the street (fountain). Better use of that area.			When you come off the bridge and get to the red light, everything to the right looks great, south looks crummy. Could use street improvements, street light improvements, and drainage improvements. Had to refurbish the street light by his business out of his own funds. How did this area get neglected by the overlay project? Maybe spread out the special events, provide an online calendar for coordination between businesses. Pay someone a decent salary to organize the whole thing	Like to see open containers allowed. They like and thrive on live music and loud atmosphere	When I asked how he would feel about a special assessment if the money collected could be controlled by the business owners, he still thought it was a bad idea. Further stated fears about government having their hand in any collection of money. Less government the better...				

# Appendix C

## Fort Myers Beach, Florida, Code of Ordinances >> PART II - CODE OF ORDINANCES >> Chapter 14 - ENVIRONMENT >> ARTICLE II. - NOISE CONTROL >>

### ARTICLE II. - NOISE CONTROL [23]

[Sec. 14-19. - Definitions.](#)

[Sec. 14-20. - Prohibited acts.](#)

[Sec. 14-21. - Sound levels by receiving land use.](#)

[Sec. 14-22. - Exceptions.](#)

[Sec. 14-23. - Waivers.](#)

[Sec. 14-24. - Enforcement.](#)

[Secs. 14-25—14-51. - Reserved.](#)

#### **Sec. 14-19. - Definitions.**

For the purpose of this article, the following terms, phrases, words and their derivations shall have the meaning given herein:

*A-weighted level (dBA)* means 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.

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

*Continuous noise* means a noise which remains essentially constant in level during the period of observation.

*Decibel (dB)* means 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 ten.

*Emergency* means an occurrence or set of circumstances involving actual or imminent physical trauma or property damage threatened or caused by an emergency.

*Emergency work* means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

*Impulsive sound* means 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.

*Intermittent noise* means a noise whose sound pressure level exceeds the ambient noise level at either regular or irregular intervals.

*Noise* means any sound which annoys or disturbs humans or causes or tends to cause an adverse psychological effect on humans.

*Noise disturbance* means one or a group of loud, harsh, nonharmonious sounds or vibrations that are unpleasant 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.

*Noise level* means, as referenced in this article, the noise level is the sound pressure level as measured in dBA unless otherwise specified. A measurement of noise must be at least five dB above the ambient noise level.

*Pure tone* means 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 five dB for center frequencies of 500 Hz and above and by eight dB for center frequencies between 160 and 400 Hz and by 15 dB for center frequencies less than or equal to 125 Hz.

*Real property line* means 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.

*RMS sound pressure* means the square root of the time averaged square of the sound pressure, denoted as PRMS.

*Sheriff's department* means the county sheriff's office who is the designated authority charged with administration and enforcement of this article.

*Sound level meter* means an instrument to measure the sound pressure level of relatively continuous and broadband noises. The sound level meter used to determine compliance with this article shall meet or exceed the requirements for type 2 sound level meter in accordance with ANSI standard S1.4.

*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 ( $20 \times 10^{-6} \text{ N/m}^2$ ). The sound pressure level is denoted LP or SPL and is expressed in decibels.

#### *Zones.*

- (1) The term "commercial zone" means any geographic area designated for commercial or professional activities by the zoning authority having jurisdiction over such area.
- (2) The term "industrial zone" means any geographic area designated for industrial or manufacturing activities by the zoning authority having jurisdiction over such area.
- (3) The term "residential zone" means any geographic area designated for single-family or multifamily dwellings by the zoning authority having jurisdiction over such area.

(Ord. No. 96-24, § 3, 9-30-1996)

### **Sec. 14-20. - Prohibited acts.**

Noise disturbance is a prohibited act. No person shall make, continue, or cause to be made or continued any noise disturbance, in accordance with the terms set forth in this article.

(Ord. No. 96-24, § 4, 9-30-1996)

### **Sec. 14-21. - 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 in this subsection when measured at or within the property line of the receiving land use.

Land Use Category	Time	Sound Level Limit (dBA)
Residential, public	7:00 a.m.—10:00 p.m.	66
Space, agricultural or institutional	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

- (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 in subsection (a) of this section shall be reduced by five 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 in subsection (a) of this section shall be increased by ten dBA from 7:00 a.m. to 10:00 p.m.
- (c) *Specific prohibitions.* In addition to the general prohibitions set out in table 1 in subsection (a) of this section, the following specific acts are declared to be in violation of this article:
- (1) *Multifamily dwellings.* In the case of multifamily dwelling units, it shall be unlawful to create or permit to be created any noise that exceeds 50 dBA during the hours between 7:00 a.m. to 10:00 p.m., or 45 dBA during the hours between 10:00 p.m. and 7:00 a.m. daily, measured from a neighbor's dwelling within said multifamily dwelling unit.
  - (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 6:00 p.m. to 7:00 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 10:00 a.m. to 10:00 p.m. from the property line of the noise source.
    - b. 55 dBA during the hours between 10:00 p.m. to 12:00 midnight from the property line of the noise source.
- (d) *Waivers.* An exception to the noise levels listed in table 1 in subsection (a) of this section 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 in subsection (a) of this section. Responsibility for the granting of such waivers shall lie with the town council or its designee.
- (e) *Article does not prohibit the charge of further penalties.* Nothing in this article 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 F.S. § 877.03, as may be amended from time to time.

(Ord. No. 96-24, § 5, 9-30-1996)

## Sec. 14-22. - Exceptions.

The following shall be permitted:

- (1) An exception to the noise levels listed in table 1 in [section 14-21\(a\)](#), 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.
- (2) The operation of warning or emergency signal devices such as sirens, horns, and bells when utilized for their intended purpose.
- (3) 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.
- (4) Ordinary noise created by the operation of refuse collection.
- (5) Any noise created by the operation of all county airports.
- (6) 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 town council or its designee, and any other applicable permit to operate such event as required by the town.
- (7) 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.
- (8) 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.

*(Ord. No. 96-24, § 6, 9-30-1996)*

### **Sec. 14-23. - Waivers.**

- (a) Applications for a waiver for relief from the maximum allowable noise level limits designated in this article shall be made in writing. Such applications for waivers shall be made to the town council or its designee. Any waiver granted must be in writing and shall contain all conditions upon which said permit shall be effective. The council may grant the waiver as applied for under the following conditions:
  - (1) In granting a permit, the council may prescribe any reasonable conditions or requirements they deem necessary to minimize adverse effects upon the community or the surrounding neighborhood.
  - (2) 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 article.
  - (3) Waivers may be issued for no longer than 180 days, renewable by further application to the town council.
- (b) Any party feeling aggrieved by the denial of its application for waiver may appeal such denial to the town council, such appeal to be filed within 30 days from the date of denial.

*(Ord. No. 96-24, § 7, 9-30-1996)*

### **Sec. 14-24. - Enforcement.**

If the county sheriff encounters a circumstance which reasonably indicates that a person is violating this article he is to administer a sound level pressure test with a sound level meter and ascertain whether a

breach of the peace or a violation of this article has occurred.

(Ord. No. 96-24, § 8, 9-30-1996)

**Secs. 14-25—14-51. - Reserved.**

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FOOTNOTE(S):

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<sup>(23)</sup> **State Law reference**— *Motor vehicle noise, F.S. §§ 316.293, 403.415.* [\(Back\)](#)