

**FORT MYERS BEACH  
WORKSHOP MEETING  
AUGUST 29, 1996**  
Nations Bank, Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA

**I CALL TO ORDER**

The meeting was opened on Thursday, August 29, 1996, at 6:37 P.M. by Anita T. Cereceda, Mayor.

Present at the meeting were: Anita T. Cereceda, Mayor and Council Member; Ted FitzSimons, Vice Mayor and Council Member; Council Members Rusty Isler and Garr Reynolds; Marsha Segal-George, Town Manager; and Attorney Richard Roosa.

Absent from the meeting: Council Member Ray Murphy

**II PLEDGE OF ALLEGIANCE**

All assembled recited the Pledge of Allegiance to the flag.

**III DISCUSSION OF NOISE ORDINANCE**

**A JOHANNA CAMPBELL**

Ms. Campbell spoke in favor of a noise ordinance. She believes that outdoor music in its place is acceptable unless it interferes with quality of life. In Times Square, she has no problem with outdoor music unless it intrudes into a residential area. The Town also needs a noise ordinance to protect neighborhoods from rowdy neighbors. Property owners need their property value protected.

**B SANDI SUTER**

Ms. Suter spoke about the need for mutual respect. People have every right to make noise on their property, but they do not have the right to have it cross their property line. She played a recording taken at her home of noise from ½ mile away.

**C JANE DRAPER**

Ms. Draper is a musician, but she believes that if music is in an outdoor venue, it has to be controlled so it doesn't punish the neighborhoods. When music is played on a deck outside, it creates problems and is not fair to neighbors. She supports having a noise ordinance.

**D DAVID RICHARDSON**

Mr. Richardson quoted a statistic that shows the Town is only 40% residential. He thinks the current ordinance is fine as it is.

**E WARREN DYKE**

Mr. Dyke feels that legislation is already in place and that it is fine. He asked the Council not to add law when it doesn't have to, because we already have enough laws. People need to use common sense and not encroach on other people's rights. Musicians love people and want people to enjoy their music, and don't want to put people out. The Town needs music, not only for personal enjoyment but also for charities and celebrations. Music gives flavor to the Town and makes tourists want to come. He has talked to tourists, and many would rather come here than Sanibel or Captiva because we have an accessible beach, we are not stuffed shirt, and they can enjoy the town.

**F ROYCE ALLGOOD**

Mr. Allgood works for Sea Kruz. He is a musician and that is his sole income. Sea Kruz has tried to comply with the noise ordinance and he thinks they have. A lot of revenue is from tourists and they come to be entertained. He asked the Council not to cut our own throats and the throats of the musicians.

**G JOHN HOUSLEY**

Mr. Housley noted that unfortunately the issue has become one of music, not of noise. Music is a beautiful part of our culture, but no one should have to live with noise. Music always has a voice and does not always have to be contained in a building. A lot of things can be done to keep outdoor music from encroaching. The town needs to be a family and work together.

**H FRANCES HODOSH**

Ms. Hodosh says that she is a lover of music and has it playing all day in her house. But a strong anti-noise ordinance with teeth needs to be enacted because everyone has right to peace and quiet in their own home. The residents deserve to be protected by the Council. With encroachment of noise, property values decline and the Town needs a strong tax base. She stated that the residential area generates about 80% of taxes that are paid. Houses were here long before the outdoor music. She wants music available so people can go listen to it, but those that don't want to hear it, shouldn't have to.

**I BRYCE BARNES**

His livelihood is music and to restrict it would be to take away his ability to make a living. The musicians don't mean to bother anyone. Let the Town and the musicians work together to fix the problem. People should understand that when you live in an entertainment district, the standards will be different than if you live in a residential neighborhood.

**J JOHNNY MAC**

Mr. Mac works on Sea Kruz, but recently built a house in a quiet neighborhood and knows the problem of having a loud neighbor. He is willing to do whatever he can to support his new home and also a quiet neighborhood. But it is a beach community and with that comes certain things such as noise and people getting out of control. But don't punish the whole class for what one student is doing.

**K TRIMBLE MCCULLOUGH**

Mr. McCullough is a resident whose family has been in the area for four generations. He will stay if he is allowed to play his music, but if not, he's gone along with a lot of other people. He presented a petition signed by almost 500 people. The petition says "I am a resident of Fort Myers Beach. I enjoy live entertainment on the beach and would like to see it continued on this island." He feels that this is a viable faction who deserves to be heard. He would like to see the Town be more like the Keys. Zoning is keeping some businesses from having music at their places, and he is not sure how that is tied to the noise ordinance, but he wants that looked into also.

**L BOBBY JOE LANGSTON**

Mr. Langston, a resident, taxpayer and father of three children, has played music at many on places on the beach. If you ban outdoor music, you ban a lot of fundraisers for good causes. He has also done earthquake and flood relief benefits, and played a benefit for Shriner's Children's Hospital. Music is how he makes his living and supports his family. He likes to play outside and doesn't want it to end. This is a tourist area and everyone who lives here knows that and knows there will be music and dancing. He asked the Council not to ban outdoor music. They all want to work it out together with residents young and old.

**M NEAL VAN VLIET**

Mr. Van Vliet, manager of Lani Kai, said that they have had music on the beach since 1979. Because of neighbors on the south, he changed the music location to the north end, closed it in on three sides and added landscaping. He doesn't know of any complaints since the improvements. Every neighbor who moves in is a potential customer and he doesn't want to offend any of them. He feels that the ordinance that we have now is strict enough.

**N CLIFTON GUILD**

Mr. Guild is a resident and member of the Fort Myers Beach marching band. During the recent Shrimp Festival when the parade was rained out, they were the only ones who played anyway. They

entertained a few thousand people who went home with pleasant memories. If the Council ends outdoor music, there will be a lot of disappointed people.

**O BILL SHENKO**

Mr. Shenko lives a mile from Lani Kai. When he heard noise, he called Lani Kai first. The Lani Kai made some changes and he hasn't heard a sound in years even though they are still playing music outdoors. They are good neighbors. If the Town bans outdoor music, we are punishing the whole class which is not fair. There are many responsible musicians and business owners. If there are no complaints, why should they have to come into compliance with a stricter ordinance. The trouble with the current ordinance is that it treats everyone the same. He thinks the Town may want to look at a more tailored approach and look at permits case by case. The decibel meter doesn't work and we are not going to be able to get a criminal conviction.

**P MARI LIPPINCOTT**

Ms. Lippincott is a beach resident and owner of the Shamrock, an outdoor establishment. She provides a venue for live music but hasn't been able to do it outside lately. She keeps it all inside. If music is played outside, they cut it off by 6 P.M. She tries to be respectful of her neighbors. She also mentioned that her property is just out of the Times Square business district so she can't do the improvements she wants to do.

**Q RAY MERTENS**

Mr. Mertens has been a Beach resident for 9 years and owns 3 restaurants. He would like to see the noise ordinance killed because it doesn't work and is not enforceable. If the Town stays with the present ordinance, he recommends that they train a couple of police officers who know how to operate the decibel meter. But he thinks it would work better if you fine the business owners for disorderly conduct if they allow music to be played too loud. Give them a warning the first time, then lock them up the next time and he guarantees they will be more careful after that. He doesn't believe we need more laws, just logically enforce what is already there. The problem is not the music, it is the failure of business owners to respond to complaints.

Mayor Cereceda felt that if the ordinance is not enforceable, it shouldn't exist. She felt that the best solution might be to permit outdoor music, but if there are complaints, the permit won't get renewed.

John Gucciardo reported on his conversation with the sheriff's office. Captain Erne has worked with the county attorney's office for 5 years, they thought they had a workable ordinance, but the courts took a different view, and he does not feel it is a workable tool now. He feels that the Town should at least modify the ordinance rather than rubber stamping the existing one, but he doesn't know exactly how to modify it. They do not want an ordinance with decibel meters, but they are willing to work with the Town. Currently they are disregarding the noise ordinance. After a warning, they go for breach of peace.

Mr. FitzSimons said residents and tourists have a right to peace and quiet. It would be best to customize outdoor entertainment by examining the exact location, analyzing the residential areas, and issuing special permits. In different zonings, you could have different allowable levels. If you are in a commercial zone, you should have the right to make a living. But many Town residents live in commercial zone, and he does not think they should have to put up with more noise just because of it.

Mr. Roosa said that special permits must have uniform guidelines or they will be seen as capricious. A special permit is basically a permit to do something that would violate the law otherwise. Once a permit is issued, neighbors have forfeited their rights. If you allow the permit to be pulled by neighbor's complaints, you are delegating to the neighbor the right to approve or disapprove the permit. He thinks the Town might want to consider violation of the ordinance as a misdemeanor and try approaching it as a civil violation. That way the Sheriff will not become involved. The code enforcement officer would determine if there is a violation, then it would go before the code enforcement board. The evidence required in a criminal case is much higher than in a civil case. The goal is not punishment or revenue, but compliance, although the penalties from a civil ruling can be substantial. This option would be more expensive to the Town, but he thinks it would be more effective. The least expensive method is to adopt it as is. He also mentioned that in the City of Clearwater ordinance, it states that loud or raucous noise is "any sound because of its volume level, duration and character annoys, disturbs, injures or

endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities". The Town might want to consider adding that language to the County ordinance.

Marsha Segal-George expressed her opinion that if the Council passes an ordinance, but it is unenforceable, they are giving people false expectations that the Town can deal with their problem. If they don't pass an ordinance, there is still the state law of disorderly conduct that can be used.

It was suggested that the Council schedule another workshop. Before that workshop, a group of interested parties should study the problem, see how big it is and where the complaints are located, and come up with some concrete suggestions. Since this can't be accomplished by October 1 when the Lee County ordinance expires, it was suggested that the Council adopt the Lee ordinance, and then amend it later.

**Motion:** Mayor Cereceda moved and Garr Reynolds seconded that the Council proceed with first reading of the present County ordinance and then to adoption, and that after October 1, the staff should work with the affected parties to tailor the ordinance to the needs of the Town. The motion passed unanimously.

The Council took a break at 8:10 P.M. and reconvened at 8:27 P.M.

#### **IV DISCUSSION ON THE BUDGET**

The staff reported that the All Hazards is still in a holding pattern. The County reports that the interlocal document is complete but that the County is still working on the exact numbers. There is a meeting next Wednesday at David Owens office to discuss it. The amount included in the budget is what we were quoted (which is this year's Lee County rate), because we don't know if we are going with the county or set out on our own.

Mayor Cereceda reported that she met with Doug St. Cerny yesterday. She suggested having a workshop between the Council and Commissioners to set up a timeline when we can expect answers. It must be public meeting.

Mr. Reynolds noted that Community Services had been raised to \$30,000 and that he thought that it should only be \$20,000 this year and perhaps increased later. Mr. Isler wanted to clarify his vote, that he didn't think the category was renamed from Human Services to Community Services, but that Human Services was canceled and that the Council added a whole new section for called Community Service after redefining and expanding it.

Mr. Gucciardo explained that originally the figure was \$324,000 for Community Development, but was changed to \$80,000 after the County gave us a quote. Now they say it is going back up, but he doesn't know the figure yet. The Town has not received the final draft of the interlocal yet.

Mr. Reynolds asked about the ordinance that is designed to protect the Town's rights to certain taxes. Mr. Roosa is working on the ordinance.

Mr. Gucciardo explained the item for unemployment self insurance. Municipalities are not required to opt into the state fund, so the Town is planning to set aside a fund so that the Town could pay if someone claimed against them. This item should only appear this one year.

#### **V ADJOURNMENT**

The meeting was adjourned at 9:26 P.M.

Respectfully submitted,

Peggy Salfen  
Recording Secretary