



**EXECUTIVE REGULATORY OVERSIGHT COMMITTEE
COMMUNITY DEVELOPMENT/PUBLIC WORKS BUILDING
FIRST FLOOR CONF. RM. 1B
1500 MONROE STREET, FORT MYERS**

**WEDNESDAY, SEPTEMBER 13, 2023
2:00 P.M.**

AGENDA

1. Call to Order/Review of Affidavit of Publication
2. Approval of Minutes – May 10, 2023
3. Annual Lee County Animal Abuse Registry Ordinance (Joe Adams, Assistant County Attorney)
4. Noise Ordinance Amendment
5. Adjournment - Next Meeting Date: November 8, 2023

To view a copy of the agenda, go to www.leegov.com/dcd/calendar.

For more information, contact Belinda Odom, (239) 533-8348 or BOdom@leegov.com.

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MINUTES REPORT
EXECUTIVE REGULATORY OVERSIGHT COMMITTEE
(EROC)
Wednesday, May 10, 2023
2:00 p.m.

Committee Members Present:

Randal Mercer, Chairman
Mike Roeder
Carl Barraco, Jr.

Tracy Hayden, Vice-Chair
Sam Hagan
Buck Ward

Excused / Absent:

Victor DuPont
Tim Keene
Bill deDeugd
Bob Knight
Michael Reitmann

Ian Moore
Jim Ink
Charles Fote
Matt Roepstorff

Lee County Staff Present:

Anthony Rodriguez, DCD, Zoning Manager
Adam Mendez, DCD, Zoning Senior Planner
Joe Adams, Assistant County Attorney
Belinda Odom, DCD Administration

Outside Consultants/Members of the Public Present:

Rick Pritchett, Carteroutdoor.com
Andy Pritchett, Carteroutdoor.com

CALL TO ORDER AND AFFIDAVIT:

Mr. Randy Mercer, Chairman, called the meeting to order at 2:00 p.m. The meeting was held in the Community Development/Public Works Building, 1500 Monroe Street, Fort Myers, Florida, Conference Room 1B.

Mr. Joe Adams, Assistant County Attorney, confirmed the Affidavit of Publication was legally sufficient as to form and content and the meeting could proceed.

Mr. Mercer stated that he had very sad news to share. Deborah Carpenter passed away on April 11, 2023. He stated that he appreciated all the years she assisted with EROC and made sure they were on their toes as far as if there would be a quorum at the meetings and doing a great job on the minutes. She loved her dogs and everyone loved her. He said that while he appreciated everyone helping while Deb was out, they really loved Debbie and she will be sorely missed.

APPROVAL OF MINUTES – March 8, 2023

Ms. Tracy Hayden made a motion to approve the March 8, 2023 minutes as written and Mr. Buck Ward seconded. The motion was called and carried unanimously.

LDC AMENDMENT – SEC 30-55 – NONCONFORMING SIGNS

Mr. Mercer stated that Mr. Rick Pritchett and Mr. Andy Pritchett were present from the public and would have an opportunity to speak if they wish.

Adam Mendez, Senior Planner, DCD stated that he would be presenting the Land Development Code (LDC) amendments pertaining to modification of Section 30-55 (Nonconforming Signs) addressing nonconforming billboard structures.

Lee County sign regulations currently permit the replacement of one nonconforming billboard in exchange for the permanent removal of a second nonconforming billboard in unincorporated Lee County within certain parameters contained in LDC Section 30-55 (a two for one replacement).

He referred to his PowerPoint presentation and explained that LDC Section 30-181 established regulations pertaining to billboard structures including locational requirement tied to certain Future Land Use Categories, as designated by the Lee County Comprehensive Plan and certain roadways, including I-75.

Originally adopted in 1985 (Ordinance 85-26), the effect of billboard regulations created legally nonconforming billboards throughout the county, primarily by virtue of their locations outside of the required future land use categories or along designated prohibited roadways. At that time, the only remedy to replace a billboard in these areas was through a variance or deviation; therefore, the owner of a billboard would either seek the requisite variance/deviation approval or maintain the nonconforming billboard's structural integrity to prevent the loss of its nonconforming status. In 1991, Lee County Ordinance 91-09 amended the nonconforming sign regulations to incentivize the removal of nonconforming billboards by allowing the right to rebuild one nonconforming billboard in exchange for removing a second nonconforming billboard elsewhere. Through this process, the replacement billboard is designated a conforming structure in perpetuity, which further guarantees the replacement billboard maintains build-back rights (LDC Section 30-55).

In 2000, Ordinance 00-14 eliminated the ability to obtain a variance or deviation from the locational requirements for billboards. Furthermore, previously nonconforming billboards that were rebuilt and deemed conforming in exchange for the removal of a nonconforming billboard elsewhere cannot be relocated, except in full conformance with the LDC. In the event the property containing a rebuilt billboard becomes unsuitable, whether by private, public, or economic pressures, the billboard must be removed with no latitude for relocation in a nearby similar setting.

County staff was engaged by billboard-industry stakeholders to assist in development of provisions to allow a one-time relocation of a billboard rebuilt in accordance with the aforementioned regulation, subject to certain requirements. The draft amendments, if approved, will permit a one-time relocation of a rebuilt billboard provided that (1) the recipient location is not an island where the billboard did not originate; (2) the proposed recipient location abuts an arterial road that is not otherwise restricted from billboard structures (LDC Section 30-183(1)(b)); and (3) the proposed recipient location is not residentially zoned and in the same or less restrictive future land use category as the rebuilt billboard's current location.

The proposed language furthers the County's objective to incentivize removing nonconforming

billboards as provided in the sign ordinance.

After Mr. Mendez was done with the presentation, he asked if there were any questions.

Mr. Buck Ward asked how many nonconforming billboards are in the County. Mr. Mendez replied that we received that feedback at the last meeting with LDCAC of how many there were. Because most of them have been in existence since prior to the sign ordinance so we don't have qualifiable data as to what that figure is. Mr. Ward asked if there was an approximation. Mr. Mendez replied probably less than 100 and most of them have already been through the two for one program.

Mr. Mercer asked if Mr. Rick Pritchett would like to say anything. Mr. Rick Pritchett started out by saying they have Carter-Pritchett Advertising in Ft. Myers. In 1991 when the idea came up for the two for one, we had properties that we took two nonconforming signs down and replaced it with one conforming sign in a nonconforming location. As the town grows and develops and buildings are built, sometimes there are times that the sign just doesn't fit on that piece of property. They have seen times where if one needs to be relocated there is no safety valve for that. It has taken 3-4 years to get to this point to try and solve this issue. If there is a location that has a conforming/nonconforming sign, they would like an opportunity to find a good home for it.

Mr. Mercer asked if all their new signs are solar powered. Mr. Pritchett replied none of theirs were, they use LED lights. Mr. Mercer complimented the way their signs look when they are lit up.

Mr. Carl Barraco, Jr. asked if you are going to change the future land use of a piece of property that has a sign going through that process, is there a way to grandfather that sign in to not moving signs all around the County. Mr. Mendez replied, future land use categories typically don't change broadly to the extent that a future land use map change may make a sign nonconforming, and that sign is entitled to remain in a nonconforming status so it effectively becomes a nonconforming billboard that would be allowed to be rebuilt on a two for one and then subsequently be relocated at a future date if needed. Mr. Barraco asked if they have them moving in and out of that status over time. Mr. Mendez replied, yes, that is kind of the nature of land use in general.

Mr. Ward wanted clarification of the two for one. Mr. Mendez explained how the two for one works.

Ms. Tracy Hayden commented there was a typo on #4, e. The word "be" is struck out and it shouldn't be. It was acknowledged by Mr. Mendez that it would be corrected.

Mr. Mercer asked if this has been in front of any other committees other than the EROC Committee so far. Mr. Mendez replied just LDCAC. Mr. Mercer wanted to know what the prior comments were. Mr. Mendez stated that they voted to recommend approval unanimously. They did have comments and they are summarized in the staff-annotated LDC Amendment packet.

Mr. Mike Roeder asked how many of these two for one slots have there been. Mr. Mendez said they heard from Bob Stewart who was at the last meeting representing Carter Pritchett signs said that there might be a dozen and Lamar may have a dozen or so.

Tracy Hayden made a motion to approve as written, Mr. Carl Barraco, Jr. seconded. The motion was called, and motion passed unanimously.

Mr. Mercer thanked Mr. Mendez for a great job and a great presentation.

There was no further business. The next meeting was tentatively scheduled for July 12, 2023.

Mr. Mercer adjourned the meeting at 2:20pm.

DRAFT

Agenda Item 3

Annual Lee County Animal Abuse Registry Ordinance

EROC ORDINANCE EVALUATION GUIDELINES

Proposed Ordinance: Lee County Animal Abuser Registry Ordinance

1. What is the public interest that the Ordinance is designed to protect?

The protection of animals in Lee County from animal abuse crimes. By creating the Registry, sellers of pets and animal shelters can easily identify individuals who have been convicted of animal abuse crimes or have been enjoined from animal possession by court order, and who cannot purchase or adopt animals by virtue of court order or by being listed on the Registry.

2. Can the identified public interest be protected by means other than legislation (e.g., better enforcement, education programs, administrative code in lieu of ordinance, etc.)? If so, would other means be more cost effective?

No. There is currently no local law that accomplishes this goal.

3. Is the regulation required by State or Federal law? If so, to what extent does the county have the authority to solve the problem in a different manner?

No.

4. Does the regulation duplicate State or Federal program? If so, why?

No. There is currently no state law that accomplishes this goal.

5. Does the regulation contain market-based incentives? If not, could that be used effectively?

N/A

6. Is the regulation narrowly drafted to avoid imposing a burden on persons or activities that are not affecting the public interest?

N/A

7. Does the regulation impose a burden on a few property owners for the benefit of the public as a whole? If so, does it provide any form of compensation?

N/A

8. Does the regulation impact vested rights?

No.

9. Does the regulation provide prompt and efficient relief mechanism for exceptional cases?

N/A

10. Even though there is an interest to be protected, is it really worth another regulation?

Yes, implantation of the Registry seeks to protect animals in Lee County from future abuse crimes.

11. Has this approach been tried in other jurisdictions? If so, what was the result? If not, what are the reasons?

Yes, similar ordinances have been adopted in several counties around the state including Miami-Dade, Hillsborough, Marion, Volusia, Pasco and more. The drafters of this ordinance met with representatives from Hillsborough County who stated that the ordinance was effective in their County and relatively simple to implement.

12. If this regulation is enacted, how much will it cost on an annual basis, both public and private? If this regulation is not enacted, what will be the public and private cost?

Implementation and updating of the Registry will be performed by the Lee County Sheriff's Office Animal Cruelty Task Force. Registrant animal abusers are required to pay fees associated with administrative costs of maintaining the Registry as outlined in Section Four of the proposed ordinance.

LEE COUNTY ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, PERTAINING TO ESTABLISHING A COUNTY ANIMAL ABUSER REGISTRY; PROVIDING FOR TITLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR ESTABLISHMENT OF AN ABUSER REGISTRY; PROVIDING FOR REGISTRATION REQUIREMENTS INCLUDING REGISTRATION FEES FOR VARIOUS ABUSE OFFENSES; PROVIDING FOR PROHIBITION ON CONTACT WITH ANIMALS UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR PROHIBITION ON ANIMAL SHELTERS, PET SELLERS, PRIVATE CITIZENS, OR OTHERS FROM TRANSFERRING ANIMAL OWNERSHIP TO ABUSERS; PROVIDING FOR REQUIREMENTS FOR ANIMAL SHELTERS, PET SELLERS, PRIVATE CITIZENS, OR OTHERS TO ENSURE PERSON NOT ON REGISTRY PRIOR TO TRANSFER OF OWNERSHIP OF ANIMALS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR APPLICABILITY; PROVIDING FOR FILING OF ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, while the State of Florida has criminalized the cruel treatment of animals, animal abuse and cruelty continues to occur in Lee County and throughout the State of Florida; and

WHEREAS, the Lee County Board of County Commissioners ("BOCC") finds that animal cruelty is a serious problem, resulting in the abuse of many animals each year; and

WHEREAS, the BOCC also finds that a strong correlation has been established linking individuals who abuse animals with incidents of domestic violence and that individuals who abuse animals are statistically more likely to commit violent acts against humans; and

WHEREAS, the BOCC further finds that people who have abused animals in the past are likely to do so in the future and studies show that there is a near 100% recidivism rate for certain types of abuse such as animal hoarding; and

WHEREAS, animal ownership carries with it both rights and responsibilities with respect to the humane treatment, care and control of owned animals; and

WHEREAS, the BOCC recognizes that residents of Lee County and their animals need to be protected and that an online registry that identifies abusers is necessary; and

WHEREAS, in 2012, the Florida legislature attempted, but was unsuccessful in passing Senate Bill 618, creating "Dexter's Law," an act establishing a state-wide animal abuse registry; and

WHEREAS, the BOCC has determined that it is in the best interest of the residents of Lee County and their animals that an online registry be established identifying individuals residing in Lee County convicted of certain abuse crimes that will prevent these individuals from adopting, purchasing, possessing, or otherwise obtaining animals from any animal shelter, pet seller, or other person or entity involved in the exchange of animals by adoption, sale, or other means; and

WHEREAS, the BOCC finds that it will serve the public health, safety, and welfare of the citizens and animals of Lee County to create this Animal Abuser Registry for Lee County.

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

SECTION ONE: TITLE.

This Ordinance shall be known and may be cited as the “Lee County Animal Abuser Registry Ordinance.”

SECTION TWO: DEFINITIONS.

The following words, phrases, or terms when used in this Ordinance shall, unless otherwise indicated, have the meanings provided below:

- A. **Animal** shall mean, generally, any living dumb creature, as provided for in Florida Statutes.
- B. **Animal Enjoinment** shall mean any person enjoined by the Court from further possession or custody of other animals under Section 828.073(4)(c)(3), Florida Statutes or otherwise by Court order.
- C. **Abuser** shall mean any persons eighteen (18) years of age or older, including juveniles tried as an adult, who have been convicted of an Abuse Offense.
- D. **Abuse Offense** shall mean the commission of any act that constitutes the criminal offense of:
 - 1. Cruelty to animals under Section 828.12, Florida Statutes;
 - 2. Fighting or baiting animals under Section 828.122, Florida Statutes;
 - 3. Killing a dog or cat with the intent to sell or give away its pelt under Section 828.123, Florida Statutes;
 - 4. Killing or aggravated abuse of horse or cattle under Section 828.125, Florida Statutes;
 - 5. Sexual activities involving animals under Section 828.126, Florida Statutes;
 - 6. Confinement of animals without sufficient food, water, or exercise under Section 828.13, Florida Statutes.
- E. **Abuser Registry** shall mean the online Registry established by this Ordinance for registering any person residing in Lee County convicted of an Abuse Offense.
- F. **Animal Shelter** shall mean any public or privately owned organization, including, but not limited to, any incorporated humane society, pound, animal protective association or animal rescue group which maintains buildings, structures, or other property for the

purpose of harboring animals which may be stray, unwanted, lost, abandoned, or abused and seeks to find appropriate temporary or permanent homes for such animals.

- G. **Companion Animal** shall mean a domesticated or tamed animal intended to provide companionship, to be used for personal use or enjoyment, or raised or intended to be raised for non-agricultural purposes; not to include a service animal or other animal or wildlife under the exclusive jurisdiction of the State.
- H. **BOCC** shall mean the Board of County Commissioners of Lee County, Florida.
- I. **Conviction** shall mean an adjudication of guilt, by any Court of competent jurisdiction, whether upon a verdict or plea of guilty or nolo contendere plea of one or more of the applicable Abuse Offenses.
- J. **County** shall mean Lee County or its designated agent.
- K. **Farm Animal** shall mean horses or animals used in the production of human or animal food, feed or fiber regardless of whether or not the animal is actually being used or raised for such purposes.
- L. **Person** shall mean any individual (eighteen (18) years of age or older, including, when appropriate, juveniles tried as an adult), firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, entity, or any group or combination thereof.
- M. **Pet Seller** shall mean any individual or person, partnership, firm, corporation or other entity which offers animals for sale or is engaged in the sale, exchange, or other transfer of ownership of animals.
- N. **Registrant** shall mean any individual or person required by this Ordinance to register with the Sheriff for the Lee County Animal Abuser Registry.
- O. **Service Animal** shall mean any dog or miniature horse that has been individually trained to do work or perform tasks for people with disabilities as defined under the Americans with Disabilities Act (ADA).

SECTION THREE: ESTABLISHING AN ABUSER REGISTRY.

The Lee County Sheriff's Office ("Sheriff") shall establish an online Abuser Registry ("Registry") that shall contain the names, residence, photo, and other related information of certain Abusers living in the County who are convicted of an Abuse Offense on or after the effective date of this Ordinance. The online Registry will be maintained by the Sheriff, shall be listed on the Sheriff's official website, (available to be posted on the website of other public agencies) and may contain links to other Abuser Registries that are available, or as they become available in the future, to be used as informational resources by Animal Shelters, Pet Sellers, or other persons or entities located in Lee County when they sell, exchange or otherwise transfer the ownership of an animal. The Sheriff and/or any other affiliated agencies may promulgate internal policies and procedures, as may be amended from time to time, necessary for the implementation of this Ordinance.

The Registry shall contain the required information about each particular Abuser, following his or her release from incarceration or, if not incarcerated, from the date of the judgment of conviction:

- A. For a period of three (3) years for a first conviction of a misdemeanor Abuse Offense;
- B. For a period of five (5) years for a first conviction of a felony Abuse Offense; and
- C. For a period of ten (10) years for a second or subsequent conviction of either a misdemeanor or felony Abuse Offense.

The page where the Registry is housed will also include a list of people who are enjoined from custody of animals either in a civil case under Section 828.073(4)(c)(3), Florida Statutes, or otherwise under Court order or as a condition of their sentencing in a criminal case. The enjoinder list will include people enjoined from custody of animals regardless of whether the Court ordered enjoinder occurred before or after the effective date of this Ordinance.

The Sheriff will attempt to ensure that the information in the Registry is accurate and complete. However, the Sheriff relies on other sources for the information. As a result, the Sheriff makes no express or implied guarantee concerning the accuracy or completeness of any of the data in the Registry.

The information in this Registry must be used responsibly. Anyone who uses this information to knowingly harass or interfere with lawful commerce shall commit a violation of this Ordinance punishable as provided in Section Seven (B).

Upon notification to the Sheriff that the criminal records of a person have been expunged by the Court or of a successful appeal of a conviction of an Abuse Offense by a person required to register pursuant to this Ordinance, the registration information for that person shall be removed from the Abuser Registry within ten (10) business days following notification.

SECTION FOUR: ABUSER REGISTRATION REQUIREMENTS.

- A. All Abusers who reside in the County and who are convicted of an Abuse Offense, on or after the effective date of this Ordinance, must personally appear at the designated Sheriff's office to register with the Lee County Abuser Registry within ten (10) business days after their release from incarceration or, if not incarcerated, from the date of the conviction judgment.

In the event an Abuser fails to timely register, the Sheriff may elect to seek the required information and to post such information on the Registry.

- B. Notwithstanding the foregoing, a person who establishes residency in the County and who was convicted of an Abuse Offense in another Florida jurisdiction, on or after the effective date of this Ordinance, must, within ten (10) business days of establishing residency in the County, personally appear at the designated Sheriff's office to register with the Lee County Abuser Registry.
- C. Every person required to register with the Abuser Registry shall personally appear at the designated Sheriff's office to submit the following:

1. Name and any aliases they may be known by;
 2. Current residence address or expected place of residence;
 3. Date of birth;
 4. A photograph of the front of their head and shoulders;
 5. Copy of judgment(s) to confirm offense(s), the date of conviction, and the sentence imposed;
 6. Any other documentation/information as the Sheriff may deem necessary to verify the information provided by the registrant.
- D. Every person required to register with the Abuser Registry shall pay an initial registration fee of \$15.00 to the Sheriff's Office.
- E. Every person registered with the Abuser Registry shall personally appear at the designated Sheriff's office to update their Registry information within ten (10) business days of any change in residential address and/or upon any official name change and shall pay a change fee of \$5.00 to the Sheriff's Office.
- F. Every person registered with the Abuser Registry shall personally appear at the designated Sheriff's office to renew their registration information annually (on the anniversary date of the initial registration or by the first business day following, or on some other date to be determined by the Sheriff). At such time, the registrant's photograph and information shall be reviewed in order to verify the continuing accuracy of what was previously provided by the registrant. The registrant shall pay a renewal fee of \$5.00 to the Sheriff's Office.
- G. Disposition of the fee: Fees collected pursuant to this Ordinance shall be deposited by the Sheriff's Office into the Sheriff's operating account to be used to help pay the administrative and maintenance costs of maintaining the Registry.

SECTION FIVE: PROHIBITION ON CONTACT WITH ANIMALS.

- A. A registrant shall not be allowed to own and/or possess and/or live in the same home with or on the same property as an animal while on the Registry unless otherwise provided in a Court order.
- B. A registrant shall not be allowed to work with a companion animal, with or without compensation or otherwise, while on the Registry unless otherwise provided in a Court order.
- C. A registrant who has been determined by a Court to be unfit to have custody of animals pursuant to Section 828.073, Florida Statutes shall also be bound by the determinations of the Court if that determination was made pursuant to the same underlying facts resulting in the criminal conviction that requires them to register with the Lee County Abuser Registry.

- D. The County and the Sheriff reserve the right and may exercise their right at any time they deem necessary to enforce or, notwithstanding any other Court order, obtain a Court order enjoining a registrant from owning and/or possessing and/or living with an animal and/or working with a companion animal while on the Registry.
- E. This section shall not apply to farm animals or service animals unless there is an enjoinder order and/or an Abuse Offense pertaining directly to farm animals or service animals.

SECTION SIX: ANIMAL SHELTERS, PET SELLERS, PRIVATE CITIZENS, OR OTHER ENTITIES PROHIBITED FROM TRANSFERRING ANIMAL OWNERSHIP TO ABUSERS.

- A. No Animal Shelter, Pet Seller, person, or entity located in the County shall sell, exchange or otherwise transfer the ownership of an animal to any person listed as an Abuser on the Abuser Registry.
- B. Prior to sale, exchange, or other transfer of ownership of any animal, the Animal Shelter, Pet Seller, or other commercial entity shall take whatever steps necessary to ensure that an animal is not being transferred to a person listed on the Registry.
- C. Such steps shall include, but may not be limited to, posting, when possible, current signage displaying registrants in well-trafficked, highly visible areas for public viewing and in stock/break areas of employees; notifying law enforcement upon the recognition of a registrant who has obtained an animal while on the Registry; and requiring the person to sign an affidavit attesting that they are not listed on the Registry.
- D. The Animal Shelter, Pet Seller, or other commercial entity shall be required to maintain the required affidavits and other adequate records and supporting documentation for three (3) years or in accordance with the required retention time set forth by business standards and practices governing the particular commercial establishment and record, whichever is greater, to assure compliance with this Ordinance. The County or the Sheriff and its authorized agents shall have the right to examine all such records and documents relating to compliance with this Ordinance, and the Animal Shelter, Pet Seller, or other commercial entity may be required to cooperate and permit the County or the Sheriff to examine all such records and documents relating to compliance with this Ordinance.
- E. It shall not be a violation if the Animal Shelter, Pet Seller, private citizen or commercial entity checked with the Abuser Registry and the name of the Abuser did not appear thereon as required.
- F. This section shall not apply to farm animals or to service animals.

SECTION SEVEN: PENALTIES.

- A. Any Abuser required to initially register with the Lee County Abuser Registry, update changes in address or name, annually renew their Registry information, pay any required fees, comply with the prohibition on contact with certain animals, and/or comply with any Court-issued enjoinder order under this Ordinance, and fails to do so, may be prosecuted in any or all of the following manners:

1. Pursuant to the provisions of Section 125.69, Florida Statutes, any person violating these provisions may be subject to prosecution in the name of the State in the same manner as misdemeanors are prosecuted; and, upon conviction, such person shall be punished by a fine not to exceed \$500.00, or by imprisonment in the County jail not to exceed 60 days, or by both such fine and imprisonment;
 2. In addition to or in lieu of any other remedy, any person who violates this section may be subject to administrative actions as authorized in Chapter 162, Florida Statutes, (Parts I and/or II).
 3. Nothing contained herein shall prevent the County or Sheriff from taking such other lawful action in law and equity as may be necessary to remedy any violation of, or refusal to comply with, any part of this Ordinance, including, but not limited to, pursuit of injunctive and/or declaratory relief and/or enjoinder, or other equitable relief in a Court of competent jurisdiction, or initiating an action to recover any and all damages that may result from a violation of, or refusal to comply with, any part of this Ordinance.
 4. Each day of a continuing violation shall constitute a separate violation.
- B. Any individual or entity that sells, exchanges or otherwise transfers the ownership of an animal to any person listed as an Abuser on the Abuser Registry, in violation of Section 6 of this Ordinance, shall be penalized in the following manner:
1. For the first offense, a warning notice shall be issued by the County or Sheriff;
 2. For a second offense, a fine may be imposed pursuant to the provisions of Section 125.69, Florida Statutes or Chapter 162, Florida Statutes Part II;
 3. For a third or subsequent violation, the individual or entity may be prosecuted in any or all of the following manners set forth above for Abusers.

SECTION EIGHT: SEVERABILITY.

If any clause, sentence, paragraph, subdivision or other part of this Ordinance or applications shall be adjudged by a Court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or otherwise invalidate the remainder of this Ordinance which shall remain in full force and effect except as limited by such order or judgment.

SECTION NINE: INCLUSION IN THE CODE OF LAWS AND ORDINANCES.

The provision of this Ordinance shall be included and incorporated in the Lee County Code, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Lee County Code, once established. The recitations contained in the "WHEREAS" clauses are incorporated herein by reference, but are not required to be reproduced and included in the Code.

SECTION TEN: APPLICABILITY.

All provisions of this Ordinance shall be applicable throughout the incorporated and unincorporated areas of the Lee County where there is no existing conflict of law, municipal ordinances concerning this matter, or unless any municipality determines to opt-out of this Ordinance's provisions.

SECTION ELEVEN: FILING OF ORDINANCE.

In accordance with the provisions of Section 125.66, Florida Statutes, governing ordinances, a certified copy of this Ordinance shall be filed with the Florida Department of State by the Clerk of the Board of County Commissioners.

SECTION TWELVE: EFFECTIVE DATE.

This Ordinance shall take effect immediately upon receipt of the official acknowledgment from the office of the Secretary of State of Florida that this Ordinance has been filed with that office.

The foregoing Ordinance was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and being put to a vote, the vote was as follows:

Kevin Ruane	_____
Cecil L Pendergrass	_____
Raymond Sandelli	_____
Brian Hamman	_____
Mike Greenwell	_____

DULY PASSED AND ADOPTED this ___ day of _____, 2023.

ATTEST: KEVIN C. KARNES
CLERK OF CIRCUIT COURT

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Brian Hamman, Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

County Attorney's Office

Agenda Item 4
Noise Ordinance Amendment

MEMORANDUM
FROM
THE DEPARTMENT OF
COMMUNITY DEVELOPMENT

**TO: Executive Regulatory Oversight
Committee (EROC)**

DATE: August 31, 2023

**FROM: Adam Mendez
Senior Planner**

**RE: Limited Amendment to Lee County Noise Control Ordinance
Ordinance 14-18, as amended by Ordinance 22-10**

The Board of County Commissioners adopted an amendment to the Noise Control Ordinance (Ordinance 14-18) on April 19, 2022 (Ordinance 22-10). Ordinance 22-10, as adopted, addressed the measurement of C-weighted sound pressures (Network dBC), pure tone analysis, and measures of enforcement, including an alternative maximum noise level table addressing the measurement of sound levels by emitting land use (Table 2). At the adoption hearing for Ordinance 22-10, the Board received public input expressing concern with respect to the exclusion of manufacturing and industrial land uses from Table 2. In the motion approving the adoption of Ordinance 22-10, the Board included direction to staff to perform further analysis to establish legally defensible sound level limits for manufacturing and industrial land uses in Table 2 to avoid the potential for a regulatory taking of a business enterprise.

Based on this direction, staff evaluated noise exposure standards established by the Occupational Safety and Health Act (OSHA) and the National Institute for Occupational Safety and Health (NIOSH) to establish a baseline for decibel values associated with the potential for hearing impairment, damage or loss. OSHA establishes a 90-dBA criterion for an 8-hour time weighted permissible exposure limit. Employers conducting business activities at or beyond this threshold are required to provide a hearing conservation program or action level plan, in addition to other requirements. The OSHA 90 dBA 8-hour time weighted average limitation is less restrictive than the NIOSH 85 dBA recommended 8-hour time weighted average. Staff, with assistance from the Lee County Sheriff's Office, performed noise level testing within a series of industrial areas in unincorporated Lee County to determine if noise levels exceeding 90 dBA and 95 dBC were present at the property line of the respective noise source. As recorded within nine distinct industrial areas throughout unincorporated Lee County, the average peak volume noise was recorded at 69.4 dBA and 76.6 dBC. These figures were considerably lower than the above-referenced OSHA and NIOSH values, especially when considering noise energy exposure doubles every 3 decibels (dB). For example, 63 dBA carries twice as much sound level pressure as 60 dBA. The limited amendment contained herein establishes an alternative sound level standard for manufacturing and industrial land uses that may be used at the discretion of the Lee County Sherriff's Office consistent with standards established in Ordinance 22-10.

EROC ORDINANCE EVALUATION GUIDELINES

Proposed Ordinance: Amendment to Noise Ordinance

- 1. What is the public interest that the Ordinance is designed to protect?**
This ordinance, as amended, is intended to establish legally defensible sound level limits for manufacturing and industrial (M&I) land uses in Table 2 to avoid the potential for a regulatory taking of a business enterprise. The amendment provides the Sheriff's Office an expanded power to investigate noise nuisances for enhanced protection of public health, safety, and welfare by allowing for a measurement of noise levels at the property line of the emitting M&I land use.
- 2. Can the identified public interest be protected by means other than legislation (e.g., better enforcement, education programs, administrative code in lieu of ordinance, etc.)? If so, would other means be more cost effective?**
No.
- 3. Is the regulation required by State or Federal law? If so, to what extent does the County have the authority to solve the problem in a different manner?**
No.
- 4. Does the regulation duplicate State or Federal programs? If so, why?**
No.
- 5. Does the regulation contain market-based incentives? If not, could that be used effectively?**
No.
- 6. Is the regulation narrowly drafted to avoid imposing a burden on persons or activities that are not affecting the public interest?**
Yes.
- 7. Does the regulation impose a burden on a few property owners for the benefit of the public as a whole? If so, does it provide any form of compensation?**
No.
- 8. Does the regulation impact vested rights?**
No.
- 9. Does the regulation provide prompt and efficient relief mechanisms for exceptional cases?**
No.

10. Even though there is an interest to be protected, is it really worth another regulation?

Yes. The proposed amendments provide a standard where none currently exists in Table 2 for M&I land uses, in order to measure sound levels that may negatively impact public health, safety, and welfare.

11. Has this approach been tried in other jurisdictions? If so, what was the result? If not, what are the reasons?

Yes. The Town of Fort Myers Beach includes maximum decibel levels as measured on the dBC network and alternative measurement standards from the emitting source property line in their respective noise ordinance. This provides for more effective enforcement as it relates to mitigating noise impacts.

12. If this regulation is enacted, how much will it cost on an annual basis, both public and private? If this regulation is not enacted, what will be the public and private cost?

There are no costs associated with enacting these regulations. The Lee County Sheriff's Office, which enforces the County noise ordinance, also enforces the noise ordinance in the Town of Fort Myers Beach, and the Sheriff's office has the type of equipment required to implement the noise ordinance, as amended.

Manufacturing & Industrial Noise Level Testing

Property Line Peak Noise Volumes

DBA*	DBC*	Location
73.3	75.1	<i>Industrial Repair – 551 Westgate Blvd</i>
52.5	68.6	<i>Waste Pro – 5594 Sixth St W</i>
62.3	73.7	<i>Flex Space – 13831 Jetport Commerce Pkwy</i>
80.2	83.8	<i>Fed Ex – 14001 Jet Port Loop</i>
77.2	84.5	<i>Brick Pavers Express – 15410 Alico Rd</i>
76.8	82.7	<i>Tarmac Titan America – 7990 Mainline Pkwy</i>
69.6	79.8	<i>Ajax Paving Industries – 7121 Pennsylvania St</i>
68.5	73.3	<i>H&H Body Shop – 17400 Alico Center Rd</i>
57.7	71.3	<i>Caliber Collision – 2140 Andrea Ln</i>
71.2	80.7	<i>Site One Landscape - 12720 Metro Pkwy</i>
77.3	76.4	<i>AHERN Rental – 5642 Enterprise Pkwy</i>
63.9	78.7	<i>FPL – 10650 Palm Beach Blvd</i>
72.3	68.3	<i>Raymonds Building Supply – 7896 Interstate Ct</i>
69.4	76.6	Average Peak Noise

* Noise level data collected on Wednesday, 12/14/2022, between 9:00 A.M. and 4:00 P.M. utilizing the slow response setting on the sound level meter in accordance with the Lee County Noise Control Ordinance.

Draft

Chapter 24¼ NOISE CONTROL

Sec. 24¼-5. Prohibited acts.

Staff Note: Amend Table 2, Sound Levels By Emitting Land Use, to propose maximum dBA and dBC sound level pressures for manufacturing and industrial land uses based on staff-conducted sound pressure level testing in conjunction with Lee County Sherriff's Office equipment and consideration to the Occupational Safety and Health Administration (OSHA) hearing conservation program standards. Table 2 sound levels are measured from the property line of the emitting land as an alternative method of noise control enforcement. Amend 24¼-5(a)(1), correction for character of sound, to recognize Table 2, consistent with the Town of Fort Myers Beach Noise Control Ordinance Sec 14-23(1)a.

The occurrence of the conditions, acts or omissions as described in either subsection (a) or (b) of this section will constitute a violation of this chapter. Should a sound level measurement method be unavailable, inappropriate for a given set of circumstances, or unable to be taken by a sound level meter, subsection (b) of this section may be used to prove a violation so long as evidence exists sufficient to establish that the sound constitutes a noise disturbance pursuant to the standards provided in subsection (b) of this section.

- (a) *Maximum permissible sound levels by receiving land.* No person shall operate or cause to be operated any source of sound in such a manner as to create a sound level which exceeds the limits set forth for the receiving land use category in Table 1 when measured at or within the real property line of the receiving land or, at the discretion of the officer, those limits set forth in the Alternative Table 2 as measured from the real property line of the noise source.

Table 1
SOUND LEVELS BY RECEIVING LAND USE

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

Table 2
ALTERNATIVE SOUND LEVELS BY EMITTING LAND USE

Land Use Category	Time	Sound Level Limit	
		dBA	dBC
All land uses excluding manufacturing or industrial	7:00 a.m.—10:00 p.m.	75	80
	10:00 p.m.— 7:00 a.m.	72	77
Manufacturing or industrial	At all times	90	95

(1) *Correction for character of sound.*

- a. For any source of sound which emits a pure tone, the maximum sound level limits set forth in Table 1 or 2 shall be reduced by five (5) dBA or dBC.
- b. For any source of impulsive sound which is of short duration with an abrupt onset, the maximum sound level limits set forth in Table 1 or 2 shall be increased by ten (10) dBA or dBC from 7:00 a.m. to 10:00 p.m.

Remainder of section remains unchanged.