

ORDINANCE 2021-13

AN ORDINANCE OF THE TOWN OF LONGBOAT KEY, FLORIDA, AMENDING CHAPTER 130, GENERAL OFFENSES, REPEALING AND REPLACING SECTION 130.02, SOUND REGULATIONS; AMENDING CHAPTER 112, PEDDLERS, DELETING SECTION 112.06, LOUD NOISES AND SPEAKING DEVICES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Longboat Key (Town) is a Florida barrier island with unique natural attributes; and

WHEREAS, the Town finds that unreasonably loud or excessive noise and associated vibration interferes with the public's enjoyment of public spaces and interferes with private property owner's enjoyment of residentially zoned properties; and

WHEREAS, the Town has received numerous complaints from Town residents that boaters on the waterways within the Town's jurisdiction frequently play radios and audio equipment at unreasonably loud levels creating unreasonably loud or excessive noise and vibration in such a manner that disturbs the peace, quiet, and comfort of individuals around them; and

WHEREAS, the Town has heard and seen evidence that indicates that the unreasonably loud or excessive noise and vibration from such boaters interferes with the public's enjoyment of the Town's beaches and waterways, and private property owner's enjoyment of their upland private property; and

WHEREAS, the Town seeks to adopt a sound and noise regulation that recognizes residential property owners' interests in preserving the quiet enjoyment of their property in residential areas, the public's enjoyment of the Town's beaches and waterways, and balances such interests with constitutionally protected freedom of speech activities; and

WHEREAS, the Town seeks to clarify when noise has become unreasonably loud or excessive noise through the implementation of objective noise measurement standards so the Town's Law and Code Enforcement Officers can more effectively enforce the Town's noise regulations; and

WHEREAS, the Town seeks to incorporate a plainly audible standard, a distance measurement, and a sound decibel level noise measure into the Town's Code of Ordinance to regulate unreasonably loud or excessive noise within the Town's jurisdiction; and

WHEREAS, the Town finds the regulation of unreasonably loud or excessive noise serves a legitimate government purpose and promotes public health, safety, and welfare for the Town's property owners, residents and visitors.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF LONGBOAT KEY, FLORIDA, THAT:

SECTION 1. The above recitals are true and correct and are hereby incorporated fully by reference.

SECTION 2. Chapter 130, Section 130.02, is hereby repealed in its entirety and replaced in its entirety to read as follows:

Sec. 130.02. Sound Regulations.

(A) Purpose.

Section 130.02 is hereby enacted to protect, promote, and preserve the public health, safety, and welfare within the Town of Longboat Key through the reduction, control, and prevention of unreasonably loud or excessive noise. This article shall be referred to as the Town of Longboat Key Noise Ordinance.

(B) Definitions.

For purposes of this Section, the following definitions shall apply:

dBA means an A-weighted unit of sound level.

Decibel means a unit of measurement of sound pressure equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or injury, natural resource damage, or property damage which demands immediate action.

Officer means any designated employee or agent of the Town of Longboat Key whose duty it is to enforce codes and ordinances enacted by the Town and may include, but shall not be limited to, Code Enforcement Officers, Law Enforcement Officers, or Fire Safety Inspectors.

Person(s) means to include, but is not limited to, any individual, natural person, firm, partnership, joint venture, syndicate or other group, or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, or other entity whatsoever or any combination of such, jointly and severally.

Person(s) responsible means to include, but is not limited to, any person who has any manner of control over a property, premises, dwelling, structure, location, business, vehicle, device, stereo, or source of the sound and may include, but is not limited to, any: property owner, tenant, subtenant, business owner, resident, operator or person having operational control, person(s) creating or controlling the volume of the sound, manager of a residential, tourism or commercial property, or person(s) in charge or otherwise authorized to make decisions regarding the use of sound equipment, or any combination of such, jointly and severally.

Plainly audible means any sound that can be clearly heard by an Officer using his or her normal hearing faculties. The Officer need not determine the particular words or phrases being produced or the name of any song or artist producing the sound. The detection of a rhythmic bass reverberating type sound is sufficient to constitute a plainly audible sound. Any Officer who hears a sound that is plainly audible shall measure the sound according to the following standards:

- (1) The primary means of detection shall be by means of the Officer's ordinary auditory senses, so long as the Officer's hearing is not enhanced by any device, such as a microphone or hearing aid; and
- (2) The Officer shall identify the source producing the sound so that the Officer can readily identify that the sound is from the offending source.

Property means any private property, public property, public right-of-way, waters within the jurisdictional limits of the Town of Longboat Key, including the air space above such property.

Private property means any real property or structures thereon owned, leased, or controlled by a non-governmental person(s) or entity.

Public property means any real property or structures thereon and waters within the jurisdictional limits of the Town owned, leased, operated, or controlled by a governmental entity.

Property line means either (i) an imaginary line along the ground surface, and its vertical plane extension, which separates the real property owned, rented, or leased by a person(s) or entity from that owned, rented, or leased by another person(s) or entity, excluding intra-building real property divisions, or (ii) the vertical and horizontal boundaries of a residential dwelling unit that is contained in a building containing two or more residential units or any combination of separately leased or owned spaces.

Public rights-of-way or public right-of-way means any roads, streets, alleys, highways, waterways, bridges, sidewalks, and other ways, including the air space above, on or at or below such rights-of-way, that are owned or controlled by a governmental entity, or dedicated to a governmental entity, for public use and presently opened or to be opened for public use, including vehicular and pedestrian movement.

Receiving property means at or within the property line which is receiving sound from another property, but does not include public rights-of-way.

Sound level means a sound pressure level obtained using a signal to which standard weighting has been applied.

Unreasonably loud or excessive noise means any sound (including pulsation, vibration, or reverberation) from any property, vehicle, or other source which: (i) is plainly audible from at least fifty (50) feet away, or (ii) exceeds the sound pressure limits at or within the bounds of the receiving land use zoning district set forth in Section 130.02(E), or (iii) is emitted by an animal continuously or persistently for more than 10 minutes.

Vehicle means any mode of transporting person(s) or thing(s) on land, water, or in the air.

(C) Unreasonably loud or excessive noise from a property prohibited.

(1) It shall be unlawful for any person(s), to permit, cause, allow, create, emit, or sustain unreasonably loud or excessive noise from a property located in the Town of Longboat Key including the jurisdictional waters thereof.

(2) When an Officer has probable cause to believe that a violation of this Section has occurred, he or she shall issue a warning to the person or persons responsible for the violation. The warning shall advise the person or persons of the violation of this Section and specify a reasonable time to comply. Absent special circumstances, "reasonable time" shall mean immediately. If the violation is not eliminated within a reasonable time after the warning as prescribed in this Section or the violation recurs within one year of the issuance of the prior warning, the person or persons so warned and not complying shall be charged with a violation of this Section and shall be subject to prosecution under the provisions of this Section.

(D) Unreasonably loud or excessive noise from a vehicle or other source prohibited.

(1) It shall be unlawful for any person(s) in control of a vehicle to permit, cause, allow, create, emit, or sustain unreasonably loud or excessive noise that is plainly audible from a vehicle or other source in the Town of Longboat Key including the jurisdictional waters thereof.

(2) When an Officer has probable cause to believe that a violation of this Section has occurred, he or she shall issue a warning to the person or persons responsible for the violation. The warning shall advise the person or persons of the violation of this Section and specify a reasonable time to comply. Absent special circumstances, "reasonable time" shall mean immediately. If the violation is not eliminated within a reasonable time after the warning as prescribed in this Section or the violation recurs within one year of the issuance of the prior warning, the person or persons so warned and not complying shall be charged with a violation of this Section and shall be subject to prosecution under the provisions of this Section.

(E) Decibel Measured Alternative for Unreasonably Loud or Excessive Noise.

(1) Maximum permissible sound levels by receiving land use zoning district. Operating, or causing or permitting to be operated, any source of sound in such a manner as to create a sound pressure level which exceeds the limits set forth at or within the bounds of the receiving land use zoning district in the following table is hereby declared to be an unreasonably loud or excessive noise in violation of this Section:

SOUND PRESSURE LEVELS BY RECEIVING LAND USE ZONING DISTRICT

<u>Receiving Land Use Zoning District</u>	<u>Time</u>	<u>Sound Pressure Level Limit (dBA)</u>
<u>Residential(R)</u> <u>Mixed Use Community (MUC)</u> <u>Tourism (T)</u> <u>Open Space (OS).</u> <u>Office-Institutional (OI, INS)</u> <u>Waterways (Land Use)</u> <u>Public right-of-way (Land Use)</u>	<u>7:00 a.m.—10:00 p.m.</u>	<u>60</u>
	<u>10:00 p.m.— 7:00 a.m.</u>	<u>55</u>
<u>Commercial (C, M)</u>	<u>7:00 a.m.—10:00 p.m.</u>	<u>72</u>
	<u>10:00 p.m.— 7:00 a.m.</u>	<u>55</u>

(2) Correction for character of sound:

(a) For any source of sound which emits a pure tone, the maximum sound pressure levels set forth in the Table in Subsection (E) of this Section shall be reduced by 5 dBA.

(b) For any source of impulsive sound which is of short duration with an abrupt onset, the maximum sound pressure levels set forth in the Table in Subsection (E) of this Section shall be increased by 10 dBA from 7:00 a.m. to 10:00 p.m.

(F) Machinery & Construction Equipment noise. No person shall operate or cause to be operated any machinery or equipment for construction, repair, alteration or demolition work without a muffler or other noise reduction device at least as effective as that recommended by the manufacturer or provided as original equipment. To the greatest extent possible, power-driven machinery and construction equipment shall be situated and used on construction sites to minimize sound impacts to abutting residentially zoned properties. Use of electric power-driven equipment, rather than internal combustion engines is encouraged to reduce sound impacts and pollution. Machinery and construction equipment that must be operated in or within one hundred (100) feet of residential zoned property 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 5:00 p.m. to 8:00 a.m., unless the unshielded sound pressure level is less than 55 dBA. For purposes of measuring machinery and construction equipment

noise, such noise shall be measured from the closest adjacent residentially zoned property line. Construction noise is prohibited on Sunday, on any holiday, or between the hours of 5:00 p.m. and 8:00 a.m. Monday through Saturday except for emergency work by a public service utility or by other waiver approved by the Town Manager. A copy of this Subsection shall be given to each person who is issued a building permit pursuant to Chapter 150 of the Longboat Key Town Code. The provisions of this Section shall only apply to power-driven machinery and construction equipment that are operated by fuel or electric power. Non-power driven related construction noise, during the non-prohibited times noted above, is exempt from the provisions of this Section.

(G) *Waivers.* An exception to the sound regulations listed in this Section may be authorized by 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 sound levels exceed those given in this Section. Such waivers shall be granted by the Town Manager. A person may seek a waiver from the provisions of this Section by seeking authorization from the Town Manager. A fully complete waiver application must be submitted, in a format provided by the Town Manager. A waiver may only be issued for a specified limited period of time and shall set forth such conditions or requirements as shall be deemed necessary to mitigate potential adverse effects upon neighboring properties and to otherwise ensure that the public health, safety, and general welfare is protected. The Town Manager may adopt administrative rules, as he or she deems necessary, to implement the provisions of this Section. The waiver, if granted, shall state on its face the name and address(es) of the person or persons to whom it is granted, the expiration date, the location applicable to the waiver and any special conditions or requirements imposed thereby. The waiver may not be transferred to any other person or location.

In determining whether a waiver shall be granted, the Town Manager shall consider the following criteria:

- (1) The nature of the activity and its importance to the general community;
- (2) The potential benefit to the Town or the general public, which may result from the proposed activity;
- (3) The availability of alternate locations where the activity may reasonably be located without creating the type or degree of potentially adverse effects it is anticipated would result at a site for which the waiver is requested;
- (4) The granting of the waiver will not be contrary to the public health, safety, and general welfare of the residents and establishments of the neighborhood and surrounding properties;
- (5) The granting of the waiver is appropriate and compatible to the existing uses of the contiguous and surrounding properties;
- (6) The granting of the waiver will not establish a precedent of or encourage more incompatible uses in the surrounding area;
- (7) The applicant has demonstrated that enforcement of the provisions of this Section would create an undue hardship on the applicant because of unique circumstances peculiar to the applicant;
- (8) The applicant has demonstrated the effectiveness of sound attenuation methods and submitted methods that the applicant will employ to lessen the potentially adverse impact associated with the grant of a special permit; and

(9) The applicant has not violated the terms or conditions of any previously granted waiver.

(H) Unreasonably loud or excessive noise declared a public nuisance. Unreasonably loud or excessive noise is declared a public nuisance. The prosecution of an offense under this Section does not limit the Town's right to abate the public nuisance in accordance with other applicable law, or from seeking injunctive relief. Subject to Town Commission approval, the Town Attorney or his or her designee(s), may bring suit on behalf of the Town against the person(s) responsible for causing or maintaining a public nuisance under this Section. This Section shall not prohibit or otherwise restrict any person(s) from bringing suit against a public nuisance for unreasonably excessive noise or noise disturbances. Relief may be granted according to the terms and conditions of F.S. § 60.05, or any other means provided by law.

(I) Exemptions.

The provisions of this Section shall not apply to:

- (1) Unamplified activities in the fields, golf courses, public recreational facilities including performance stages or sports complex to which the public or community has access;
- (2) Sound generated from any event when a permit has been obtained from the Town of Longboat Key, and the sound is in compliance with any conditions imposed by that permit. This provision shall include, but not be limited to, any parade, road festival, or special event permit;
- (3) Sound which results from the reasonable maintenance of property that does not require a building permit in the Town of Longboat Key including, but not limited to: lawn mowers, chippers, clippers, blowers, manual (non-motorized) tools, power tools, and tractors. This exemption is only applicable between the hours of 8:00 a.m. and 5:00 p.m.;
- (4) Unamplified human voice(s). This exemption is only applicable between the hours of 8:00 a.m. and 11:00 p.m.;
- (5) The emission of sound for the purpose of alerting the public of an emergency or the performance of emergency work.
- (6) Motorized vessel engine or exhaust-related noise.
- (7) Safety alarms including, but not limited to, swimming pool alarms that have minimum sound volume requirements pursuant to Florida Statutes, Florida Building Code or other applicable life safety regulation.

(J) Enforcement.

This Section may be enforced by an Officer as follows:

- (1) Enforcement by civil citation punishable as an infraction.
 - (a) Any person(s) responsible for a violation of this Section may be issued a civil citation. The Town's Officer(s) shall have the power to enforce the provisions of this Section through civil fines and administrative proceedings, including but not limited to, Code Enforcement proceedings in accordance with Chapter 33 of the Code of Ordinances of the Town of Longboat Key, F.S. Chapter 162, and by equitable or legal judicial proceedings. Each day of any such violation shall constitute a separate and distinct offense.

(b) Joint and several responsibility. Any person(s) responsible for unreasonably excessive noise, as defined herein, may be liable for the violation. More than one person may be found to be responsible for the violation. More than one citation may be issued for a reoccurring unreasonably loud or excessive noise.

(K) Alternative enforcement. Nothing contained herein shall limit enforcement of the prohibition of unreasonably loud or excessive noise through alternative means as otherwise allowed by law.

SECTION 3. Chapter 112, Section 112.06, Loud noises and speaking devices, is hereby deleted in its entirety as follows:

~~112.06 Loud noises and speaking devices.~~

~~No peddler, nor any person in his behalf, shall shout, make any cryout, blow a horn, ring a bell or use any sound device, including any loud speaking radio or sound-amplifying system upon any of the streets, alleys, parks or other public places of the town or upon any private premises in the town where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the streets, avenues, alleys, parks or other public places by a reasonable person of normal sensibilities and hearing, for the purpose of attracting attention to any goods, wares or merchandise which such licensee proposes to sell.~~

SECTION 4. Repeal of Ordinances in Conflict. All other ordinances of the Town of Longboat Key, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

SECTION 5. Codification. This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Longboat Key upon adoption.

SECTION 6. Effective Date. This Ordinance shall take effect immediately upon its adoption, as provided by law.

Passed on first reading the 6th day of December, 2021.

Adopted on second reading and public hearing the 10th day of January, 2022.

ATTEST:

/s/ Kenneth Schneier

Kenneth Schneier, Mayor

/s/ Trish Shinkle

Trish Shinkle, Town Clerk