

**CITY OF HOLMES BEACH
ORDINANCE NO. 23-01**

7.a

**AN ORDINANCE OF THE CITY OF HOLMES BEACH, FLORIDA
AMENDING CHAPTER 30 – ENVIRONMENT, ARTICLE III. – HOLMES
BEACH NOISE CONTROL ORDINANCE, TO CORRECT SCRIVENER’S
ERRORS IN SECTION 30-53. DEFINITIONS; TO PROVIDE OBJECTIVE
BACKGROUND STANDARDS IN SECTION 30-55. NOISE
DISTURBANCE PROHIBITED; TO PROVIDE FOR SEVERABILITY; TO
PROVIDE FOR CODIFICATION; AND PROVIDE FOR AN EFFECTIVE
DATE.**

WHEREAS, Article III of Chapter 30 of the City of Holmes Beach Code of Ordinances is the City of Holmes Beach Noise Control Ordinance; and

WHEREAS, on June 7, 2023, an Order was issued by Judge Amanda Arnold Sansone of the Middle District of Florida, Tampa Division, in case number 8:22-cv-1682-AAS finding Subsection 30-55(2)(a), City of Holmes Beach Code of Ordinances void for vagueness thus violating the Fourteenth Amendment to the U.S. Constitution and enjoining the City from enforcing Section 30-55(2)(a); and

WHEREAS, the City Commission desires to amend Section 30-55(2)(a), City of Holmes Beach Code of Ordinances, in light of the Court’s holding, to provide specific and objective criteria to evaluate noise so that the City may enforce the Section and provide for the health, safety, and welfare of its citizens, business, and visitors alike; and

WHEREAS, in reviewing Chapter 20 -Environment, it was found that Section 30-53. – Definitions, was misnumbered. The City Commission desires to rectify this error for clarity’s sake. This amendment will not change the substance of the ordinance or its applicability; and

NOW, THEREFORE, be it ordained by the City Commission of the City of Holmes Beach, Florida, as follows:

SECTION 1. The above “whereas” clauses are adopted herein as findings of fact.

SECTION 2. Chapter 30 – Environment, Article III., Section 30.53. – Definitions, of the Holmes Beach Code of Ordinances shall be amended as follows:

Sec. 30-53. Definitions.

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- (8) *Emergency work*: Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency, including work necessary to restore property to a safe condition following an emergency.

- (109) *Noise*: Any sound which annoys or disturbs a reasonable person of ordinary sensibilities or causes or tends to cause an adverse physical or psychological effect on such reasonable person. "Noise" includes but is not limited to low frequency sounds that can induce vibration in structures or human beings.
- (110) *Noise disturbance*: Any noise or vibration which:
- a. Disturbs, annoys or is harmful or injurious to the health or welfare of a reasonable person of ordinary sensibilities, or
 - b. Exceeds the maximum allowable limits set forth in this article.
- (121) *Park land*: Land that is used primarily for public recreational activities.
- (132) *Person*: Any natural person, public or private corporation, firm, association, joint venture, partnership, or any other entity whatsoever or any combination of such, jointly and severally.
- (143) *Plainly audible*. Any sound that can be clearly heard by a person using his or her normal hearing faculties. The person need not determine the particular words or phrases being produced or the name of any song or artist producing the sound. Any person who hears a sound that is plainly audible shall measure the sound according to the following standards:
- a. The primary means of detection shall be by means of the person's ordinary auditory sense, so long as the person's hearing is not enhanced by any device, such as a microphone or hearing aid; and
 - b. The person shall first identify the location producing the sound so that the person can readily identify the sound is from the offending location.
- (154) *Public right-of-way*: Any street, avenue, boulevard, highway, sidewalk or alley or similar place normally accessible to the public which is owned or controlled by a governmental entity.
- (165) *Public space*: Any real property or structure thereon normally accessible to the public which is owned or controlled by a governmental entity.
- (176) *Real property line*:
- a. The imaginary line along the ground surface including its vertical extension that separates one parcel of real property from another; or
 - b. The vertical and horizontal boundaries of a dwelling unit that is one unit in a multi-dwelling-unit building.
- (187) *Residential area*: Any area designated for residential use pursuant to the City of Holmes Beach Land Development Code.
- (198) *Short duration and non-repetitive*: Any sound with a duration of less than 30 seconds.
- (2019) *Sound*: A temporal or spatial oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

- (240) *Sound analyzer:* A device for measuring the octave band level of a sound as a function of frequency.
- ~~†(221)~~ *Sound level:* The conversion of sound pressure to a logarithmic measure called the decibel.
- (232) *Sound level or noise meter:* An instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter, and weighting networks used to measure sound pressure levels. The output meter reads sound pressure level when properly calibrated, and the instrument is of type 2 or better, as specified in the American National Standards Institute publication S1.4-1983 or its successor publication.
- ~~†(243)~~ *Vibration:* A temporal and spatial oscillation of displacement, velocity, and acceleration in a solid material.
- (254) *Violator:* Any person, natural or otherwise, in violation of those portions of the Code of Ordinances of the City of Holmes Beach, or any ordinances not yet codified, which are within the jurisdiction of the City of Holmes Beach. A "violation" may be the owner of the property where the violation exists, the person in charge of the property where the violation exists, such as a tenant or rental agent or the person causing the violation, regardless of whether the person is an owner or in charge.

SECTION 3. Chapter 30 – Environment, Article III., Section 30.55. – Noise disturbance prohibited., of the Holmes Beach Code of Ordinances shall be deleted in its entirety and replaced with the following:

Sec. 30-55. - Noise disturbance prohibited.

1. *Prohibition of noise disturbance.* It shall be unlawful for any person to permit, cause, allow, create, emit, or sustain unreasonably excessive noise from a property constituting a noise disturbance. Noise violations are considered irreversible and irreparable.
2. *Prima facie evidence.* The following shall constitute prima facie evidence that a noise disturbance (whether recurrent, intermittent, or continuous) has occurred:
 - a. A sound which is unreasonably loud, raucous, or jarring to a reasonable person of normal sensitivities when plainly audible from a minimum of 100 feet from the property line of the source of the sound; or
 - b. the operation of any source of sound in such a manner as to create a sound level at a receiving property that exceeds the following sound level limits:
 1. Sixty-five dBA during the hours between 7:00 a.m. and 10:00 p.m.
 2. Fifty dBA during the hours between 10:00 p.m. and 7:00 a.m.
3. All determinations of violations of noise disturbances are subject to the terms of all applicable approved site plans.

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4. Operation of equipment or conduct of activities normal to residential communities and the use of outdoor mechanical equipment in residential areas are governed by section 30-54.
 5. *Sound level limits measured by sound level meter.*
 - a. Sound level limits pursuant to this section that are measured with a sound level meter shall use meters operating on the A-weighted scale of any standard design and quality meeting the standards prescribed by the American National Standards Association. The instruments shall be maintained in calibration and good working order.
 - b. The operator shall record measurements in a way which provides a proper representation of the sound source. The microphone used during measurement shall be positioned so as to not to create any unnatural enhancement or diminution of the measured sound. A wind-screen for the microphone should be used when required. Traffic, aircraft, and other background ambient sounds shall not be considered in taking measurements except where such ambient sound interferes with the primary noise being measured.
 - c. The measurement shall be made from the real property line or the adjoining public right-of-way line of the property where the sound is generated and in accordance with the measurement protocols established above.
 6. *Internal combustion engine.* Rapid and repeated throttle advance (revving of an internal combustion engine) on the public right-of-way resulting in increased sound from the engine is deemed a noise disturbance under this chapter.
 7. *Speakers, noise producing devices, and amplification system.* Any person using an electronic speaker system, noise producing device, or amplification system used outside of a residence or business shall position those items so the direction of the sound is directed internal to the property which houses the source of the speaker, noise producing device, or amplification system, and away from surrounding properties to the greatest extent possible.

SECTION 4. If any section, subsection, paragraph, sentence, clause, or phrase in this Ordinance is held invalid by a court of competent jurisdiction, then such invalidity shall not affect the remaining portions of this Ordinance.

SECTION 5. For purposes of codification of the Code of Ordinances, City of Holmes Beach, Florida, words **underlined** represent new text or additions to original text, words **~~stricken~~** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

SECTION 6. The Codifier shall codify the substantive amendments to the Code of Ordinances, City of Holmes Beach, Florida contained in Section 2 of this Ordinance as provided for herein and shall not codify the exordial clauses or any other sections not designated for codification.

SECTION 7. Pursuant to §166.041(4), Fla. Stat., this Ordinance shall take effect immediately upon adoption.

PASSED AND ADOPTED, by the City Commission of the City of Holmes Beach, Florida, in regular session assembled, this ____ day of _____, 20__.

First Reading: _____

Publication Date: _____

Second Reading and Public Hearing Date: _____

Terry Schaefer

Dan Diggins

Carol Soustek

Pat Morton

Greg Kerchner

APPROVED BY ME THIS ____ DAY OF _____, 20__.

Judy Titsworth, Mayor

ATTEST: _____
Stacey Johnston, MMC, City Clerk