

ORDINANCE NO. 1096 – 2017

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, AMENDING CHAPTER 99, "NOISE," BY UPDATING DEFINITIONS AND ENFORCEMENT STANDARDS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 99, "Noise," of Title IX, "General Regulations," of the City of Miami Springs (the "City") Code of Ordinances (the "Code") sets forth regulations governing noise in the City; and

WHEREAS, the City Council desires to amend the Code as it pertains to noise regulations to update definitions and enforcement standards as specified herein; and

WHEREAS, the City Council finds this ordinance furthers the health, safety, and welfare of the City and is in the City's best interest.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

Section 2. Amendment. The City of Miami Springs Code of Ordinances is hereby amended to read as follows:

* * *

Chapter 99 – Noise

Article I. – GENERAL REGULATIONS

Section 99-01. - Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Ambient noise level means the sound pressure level of the all-encompassing noise emanating from a given environment, usually being a composite of sounds from many sources including the source of interest.

ANSI means the American National Standards Institute.

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ASTM means the American Society for Testing and Materials.

A-Weighted Equivalent Sound Pressure Level (LAeq) means a sound level descriptor based on the average sound pressure level in a specified time period. LAeq is intended as a single number indicator to describe the sound pressure level of a sound that varies over a specified period of time. LAeq is measured in decibels and must be A-weighted (dBA). The minimum measurement time for this regulation is defined as two (2) minutes.

Background noise level means the sound pressure level of the noise in a given environment without the source of interest.

Commercial Neighborhood means the various commercial and mixed-use zoning districts specified in Chapter 150 of this Code of Ordinance, which may change from time to time, including, without limitation, Neighborhood Business District, Central Business District, B-3 Arterial Business District, Professional Office District, Airport Golf District, NW 36th District, and Abraham Tract District.

Construction Noise means Noise resulting from construction, demolition, maintenance, additions, alterations or repairs to Structures or Buildings.

Continuous sound shall mean a sound the intensity of which remains relatively constant during the period of observation. Continuous sound may include, without limitation, music, mechanical equipment, construction equipment, and motor vehicles.

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

Impulse sound means a single or multiple sound event characterized by a rapid rise to a maximum sound pressure of high intensity, followed by a somewhat slower decrease in sound pressure. The duration of an impulse sound event, which included a combination of rise time, peak amplitude and decay, shall be no more than one second. Impulse sound may include, without limitation, the discharge of a weapon, pile driver, or blasting.

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

Noise Disturbance means any sound in quantities which are in excess of decibel standards specified herein and/or are or may be potentially harmful or injurious to human health or welfare, or which unnecessarily interferes with the enjoyment of life or Property, including outdoor recreation, of a reasonable Person with normal sensitivities.

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Residential Neighborhood means the various residential zoning districts specified in Chapter 150 of this Code of Ordinance, which may change from time to time, including, without limitation, single family, duplex, multi-family, and townhouse districts.

Sound level means the weighted sound pressure level obtained by the use of a metering characteristic and weighting A, B, or C, as specified in American National Standards Institute specifications for sound level meters (ANSI S1.4-current edition). If the weighting employed is not indicated, the A-weighting shall apply.

Sound Level Meter means an instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter and weighting network or digital signal acquisition and analysis modules to perform these and other functions, used to measure sound pressure levels. The output meter reads sound pressure level when properly calibrated. The sound level meter shall be of Type 1 as specified in the American National Standards Institute publication entitled "Specifications for Sound Level Meters," designated as ANSI S1.4 2014 and should be capable of measuring the A-Weighted Equivalent Sound Pressure Level. The period of time over which sound levels are measured reflects the nature of the situation and the minimum measurement time shall be no less than two (2) minutes.

Sound Pressure means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by the presence of sound energy.

Sound Pressure Level means 20 times the logarithm to the base ten of the ratio of the RMS sound pressure to the reference pressure of 20 micro-newtons per meter squared. The sound pressure level is denoted L_p (or SPL) and is expressed in decibels.

Sec. 99-021. - Unnecessary, excessive, or unusual noises, generally.

It shall be unlawful for any person or business to make, continue or cause to be made or continued any loud, unnecessary, excessive, or unusual sound or noise Noise Disturbance in the City, ~~which sound or noise shall exceed the sound or noise emanating from any particular location in the City previously, without first obtaining a permit therefor in accordance with the provisions of this chapter.~~

Sec. 99-032. – Violations of this Article ~~Operation of radios, phonographs, or other sound-making devices or ensembles.~~

~~It shall be unlawful for any person owning, occupying, or having charge of any building or premises or any part thereof, in the City, at any time to cause or allow any loud, unnecessary, excessive, or unusual noises in the operation of any~~

~~radio, phonograph, or other mechanical sound-making device, or instrument, or reproducing device or instrument, or in the playing of any band, orchestra, musician, or group of musicians, or in the use of any device to amplify the music of any band, orchestra, musician, or group of musicians, where the noise or music is plainly audible at a distance of 50 feet in commercial or business districts or 25 feet in residential districts from the building, structure, vehicle, or premises in which or from which it is produced. The fact that the noise or music is plainly audible at a distance set out above from the vehicle or premises from which it originates constitutes prima facie evidence of a violation of this section.~~

(A) *Prohibited acts generally.* Unless otherwise addressed in this article, the following acts, and the causing or permitting thereof, are presumed to be in violation of this article:

- (1) Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument or other machine or device for the producing or reproducing or amplifying of sound which creates a Noise Disturbance across a real property line in a Residential or Commercial Neighborhood;
- (2) Owning, possessing or harboring any animal or bird, which frequently or for a continued duration howls, barks or makes other sounds which create a Noise Disturbance across a real property line in a Residential or Commercial Neighborhood;
- (3) Operating or causing the operation of any tools or equipment used in construction, drilling or repair work or any building operations which is attended by loud or unusual noise, outside of the hours 8:00 a.m. to 8:00 p.m., Monday through Friday, 8:00 a.m. to 5:00 p.m. on Saturdays, and from 8:00 a.m. to 5:00 p.m. on Sundays, except by written permission of the City Manager, or only in case of emergency; provided, however, for any noises emanating from the activities listed herein during the hours in which such noises are permitted, the associated equivalent sound levels shall not exceed the equivalent A-weighted sound level limits of subsection (B) by five decibels and the associated maximum A-weighted sound levels shall not exceed the equivalent A-weighted sound level limits of subsection (B) by ten decibels;
- (4) Using or firing explosives or similar devices, except in an Emergency, or using or firing firecrackers, skyrocketes or the like if prior permission is not obtained from the City;
- (5) Any person owning, occupying, or having charge of any business establishment, or any part thereof, in the City, to cause or allow the playing or operating music boxes, juke boxes, radios,

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musical instruments, or any other musical devices on or about the premises between the hours of 10:00 p.m. and 8:00 a.m. the following day Sunday through Thursday or the hours of 11:00 p.m. and 8:00 a.m. Friday and Saturday; unless such music boxes, juke boxes, radios, musical instruments, and other devices are played or operated in a closed building and the sound is not audible from outside the building and/or in a manner that does not disturb the quiet, comfort, or repose of persons in any dwelling, hotel, or other type of residence;

- (6) ringing any handbell, beating or striking any pan, pail, or other like article, or sound any gong or blow any whistle or horn other than a musical instrument when used as part of a band or orchestra, except to give necessary signals upon a motor vehicle, motorcycle, bicycle, or similar vehicle; or to cry out the sale of goods, wares, or merchandise;
- (7) blowing, ringing, or sounding any automobile horn, chime, or bell on or about premises used in conjunction with the operation of any mobile food retailer, unless such blowing, ringing, or sounding is necessary for the protection of life or property;
- (8) discharging a gun, squibs, crackers, gunpowder, or other combustible substance in the streets or elsewhere for the purpose of making noise or disturbance, except upon proclamation or by written permission of the City; and
- (9) operating lawn mowers, edging equipment, hedge or tree trimming equipment, pressure cleaning equipment, and all other home and lawn maintenance machines and equipment between the hours of 8:00 p.m. and 8:00 a.m. the following day.

(B) *Noises exceeding permitted decibel level. Any noise that emits,*

(1) a continuous sound measured at an A-weighted equivalent sound level (Leq) in excess of 70 dBA, and/or an impulse sound in excess of 90 dBA in any Residential Neighborhood and or any Commercial Neighborhood abutting a residential Neighborhood between the hours of 8:00 a.m. and 10:00 p.m. Sunday through Thursday or the hours of 8:00 a.m. and 11:00 p.m. Friday and Saturday (Daytime Decibel Levels), and/or

(2) a continuous sound measured at an A-weighted equivalent sound level (Leq) in excess of 60 dBA, and/or an impulse sound in excess of 70 dBA in any Residential Neighborhood and or any Commercial Neighborhood abutting a residential Neighborhood between hours of 8:00

a.m. and 10:00 p.m. Sunday through Thursday or the hours of 8:00 a.m. and 11:00 p.m. Friday and Saturday (Evening Decibel Levels).

shall be presumed a nuisance and prima facie evidence of a violation of this article. As per section 99-01, measurements shall be taken and averaged over a period of time no less than two (5) minutes. The measurements shall be taken with a calibrated sound level meter at the location of the dwelling unit or premises of the complaining party. If there is no complaining party, the measurement shall be taken at approximately 100 feet from the source from which the noise is emanating.

Sec. 99-05. – Exceptions.

The provisions of this Article shall not apply to:

- (1) Noise generated by any construction equipment which is operated during daytime hours, defined for the purposes of this section as from 8:00 a.m. to 8:00 p.m., Monday through Friday, 8:00 a.m. to 5:00 p.m. on Saturdays and from 8:00 a.m. to 5:00 p.m. on Sundays;
- (2) Noise created as a result of or relating to an emergency;
- (3) Noise from demolition work conducted during daytime hours. When considered emergency work, demolition shall be exempted at all times from the noise levels set in this regulation;
- (4) Noise created by any recreational activities on public property which are permitted by law and for which a license or permit has been granted by the City, including but not limited to parades, sporting events, concerts and firework displays;
- (5) Noise created by refuse and solid waste collection; provided, that the activity is conducted during daytime hours;
- (6) Noise created by pick-up or delivery vehicles in commercial or industrial zones during daytime hours;
- (7) Noise created by the operation of lawn mowers, edging equipment, hedge or tree trimming equipment, pressure cleaning equipment, and all other home and lawn maintenance machines and equipment between the hours of 8:00 p.m. and 8:00 a.m. the following day.

Sec. 99-05. – Mitigation practices

Any person operating or causing or allowing the operation of tools or equipment used in construction, drilling or repair work, shall mitigate noise by assuring

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compliance with noise mitigation practices or other methods that the Building Official determines, in his or her sole discretion.

Sec. 99-06. – Responsible parties

The parties responsible for a violation shall include the owner of a property, the lessee of a property where such violation occurs within lessee's leased space and the individual or entity engaged in the Noise-generating activity. Each responsible party shall be provided notice wherever notice to the violator or property owner is required by this Code.

Sec. 99-07. – Deviations

Pursuant to Article II herein, an applicant may seek the prior written consent of the City Manager to make Noise for a limited time during the prohibited hours or in excess of the Permitted Decibel Levels. Such consent may be granted by the City Manager if an applicant submits documentation establishing, as determined in the sole discretion of the City Manager, that the activity producing the Construction Noise, by its very nature, cannot meet the Permitted Decibel Level or be mitigated to meet the Permitted Decibel Level. The City Manager may impose appropriate conditions to mitigate the impact of the deviation on the City.

Sec. 99-08. – Penalties

- (A) A City officer who finds a violation of this article may issue an oral warning to the violator(s) to immediately correct the violation or to correct the violation within a specified time period. If circumstances are such that the violation cannot be corrected immediately, then the violator(s) shall be required to undertake such action as may be reasonably required as quickly as possible to correct the violation and to use continuous diligent effort to conclude such corrective action as is necessary. If the violation which is the subject of the verbal warning by the City officer is not immediately corrected or, if applicable, not corrected within the time period which it takes to do so with the use of all reasonable due diligence, then the City officer shall issue a civil violation notice to the violator(s) requiring correction of the violation as specified, and imposing a fine of \$100.00 for which the violator(s) shall be liable. The written civil violation notice shall specify the nature of the violation of this article.
- (B) If a violator(s) of this article has previously received a written citation from a City officer for a violation of this same article which arose from the same kind of noise or disturbance, and which occurred within the 12 months prior to the current violation, then the City officer shall issue a written civil violation notice to the violator(s) which requires the correction of the violation, as specified, and which imposes a fine in the amount of \$250.00

for the violation. Should a City officer respond to the same location for the same violation three times within a 24-hour period, the matter may referred over to the Police Department.

~~Sec. 99-03. -- Hours of operation of sound-making devices.~~

~~It shall be unlawful for any person owning, occupying, or having charge of any business establishment, or any part thereof, in the City, to cause or allow the playing or operating of music boxes, juke boxes, radios, musical instruments, or any other musical devices on or about the premises between the hours of 10:00 p.m. and 7:00 a.m. the following day; unless such music boxes, juke boxes, radios, musical instruments, and other devices are played or operated in a closed building and the sound is not audible from outside the building so as to disturb the quiet, comfort, or repose of persons in any dwelling, hotel, or other type of residence.~~

~~Sec. 99-04. -- Percussive sounds; horns; whistles.~~

~~It shall be unlawful for any person to ring any handbell, beat or strike any pan, pail, or other like article, or sound any gong or blow any whistle or horn other than a musical instrument when used as part of a band or orchestra, except to give necessary signals upon a motor vehicle, motorcycle, bicycle, or similar vehicle; or to cry out the sale of goods, wares, or merchandise; or to make, aid, continue or encourage or assist in making any other loud or unusual noises on the streets of the City.~~

~~Sec. 99-05. -- Sounds to advertise selling of food.~~

~~It shall be unlawful to blow, ring, or sound any automobile horn, chime, or bell on or about premises used in conjunction with the operation of any barbecue or soft drink stand or restaurant where such barbecue or soft drink stand or restaurant premises is located within a distance of 25 feet from improved residential property, unless such blowing, ringing, or sounding is necessary for the protection of life or property.~~

~~Sec. 99-06. -- Discharge of combustibles.~~

~~It shall be unlawful to fire or discharge a gun, squibs, crackers, gunpowder, or other combustible substance in the streets or elsewhere for the purpose of making noise or disturbance, except upon proclamation or by written permission of the City Manager.~~

~~Sec. 99-07. -- Sounds simulating emergency vehicles.~~

~~It shall be unlawful for any person to carry or use upon any vehicle any gong or siren whistle similar to that used on ambulances or police or fire vehicles.~~

Sec. 99-08. - Construction and property maintenance noise.

~~It shall be prohibited for any person in conducting any building operations between the hours of 30 minutes after sunset and 8:00 a.m. to operate or use any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist, or other apparatus, the use of which is attended by loud or unusual noise, except by written permission of the City Manager, and then only in case of emergency.~~

~~In addition, the aforesaid prohibition against the generation of loud or unusual noise shall also be applicable to the operation of lawn mowers, edging equipment, hedge or tree trimming equipment, pressure cleaning equipment, and all other home and lawn maintenance machines and equipment.~~

Sec. 99-09. - Noise creating blowers, fans, air-conditioning, or internal-combustion engines.

~~It shall be unlawful to operate or cause to be operated, any noise creating blower, power fan, air-conditioning unit, or internal-combustion engine, unless the noise from such blower or fan is muffled and such engine is equipped with a muffler device sufficient to deaden such noises, so that they shall not cause annoyance to the public or disturb the rest and quiet of persons residing in or occupying property near enough to be annoyed by the unmuffled blower, fan or exhaust of any such engine.~~

Sections 99-06 through 99-19 reserved.

ARTICLE II. - PERMITS

Sec. 99-20. - Permit for exception to general regulations.

All persons, corporations, entities, groups or nonprofit organizations and churches who intend to produce noise ~~or music during proscribed~~ after permitted hours, or noise ~~or music in excess of the Permitted Decibel Levels and/or at~~ distances in excess of those permitted In Article I of this Chapter, by §§ 99-01— ~~99-09~~ may apply to the City Manager prior to producing any such noise ~~or music~~ for a permit authorizing such noise for a limited duration ~~or music~~, establishing conditions of use, performance bond, and termination date of the authorization sought.

Sec. 99-21. - Application for permit.

(A) Application for a permit shall be initiated by the filing of a request with the City Clerk setting forth:

- (1) The nature of the noise or music.

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- (2) The distance such noise or music will be audible.
 - (3) The location of the source of the noise or music.
 - (4) The time the noise or music will be produced during any 24-hour period.
 - (5) The nature and type of equipment producing the noise or music.
- (B) The application shall be executed by the real party in interest or its lawful agents.

Sec. 99-22. - Investigation of application.

- (A) Upon receipt of any application for a permit pursuant to the provisions of Code of Ordinance §§ 99-20—99-21, the City Manager shall conduct an investigation to determine if, in his sole and exclusive discretion, it is both reasonable and appropriate to grant the requested permit.
- (B) The City Manager may require additional information and documentation from the applicant as part of the investigative process.
- (C) The City Manager may additionally require that the City send written notices, by certified mail, to all owners of property within 350 feet of the applicant's property. The costs of drafting and mailing the notices to the affected property owners shall be paid in advance by the applicant. However, the City Manager's decision to forego the mailing of notices, or the City's failure to mail or any property owner's failure to receive such notice, shall not affect the validity of the City Manager's decision in regard to the application for permit.

Sec. 99-23. - Decision and conditions of permit.

After completing his investigation, the City Manager shall determine whether or not the noise ~~or music~~ sought to be produced during the proscribed hours or in excess of the Permitted Decibel Levels or the distance permitted by §§ 99-01—99-09 Article I of this Chapter is unnecessary, excessive, or unusual so as to constitute a public nuisance. In the event the City Manager finds that the noise ~~or music~~ sought to be produced does not constitute a public nuisance, the City Manager may grant the application subject to the following terms and conditions:

- (A) Applicants for permits for production of noise ~~or music~~ for more than a one-year term shall post a performance bond in an amount that the City Manager, in his sole and exclusive discretion, determines to be both reasonable and appropriate, conditioned upon removal of the noise or music, in the event the applicant violates any of the terms or conditions of the permit or any of the representations made in the application or to the City Manager in support of its application. The bond shall bind the successors in interest of the applicant.

- (B) The City Manager shall establish the time during any 24-hour period when the noise ~~or music~~ may be produced.
- (C) The City Manager shall establish the date when the authorization granted to produce such noise ~~or music~~ shall terminate.
- (D) The City Manager may impose such additional conditions governing the producing of the said noise ~~or music~~ as may be reasonably necessary to prevent the creation of a public nuisance.

Sec. 99-24. - Revocation of permit.

The City Manager shall have the authority to revoke the permit on any of the following grounds:

- (A) The application for the permit contains misrepresentations, or the applicant has made, or caused to be made, misrepresentations of fact before to the City or the City Manager in order to obtain the necessary authorization.
- (B) In the course of carrying on the noise ~~or music~~ permitted, the applicant has violated any of the terms or conditions of the permit or produced the noise or music in such a manner as to constitute a public nuisance, breach of peace, or otherwise interfered with the public safety or general welfare of the citizens of the City.
- (C) The applicant has failed to comply with the provisions of the Code of Ordinances, or the performance bond has been revoked.

Sec. 99-25. - Appeal of revocation of permit.

Any applicant aggrieved by the action of the City Manager in revoking any permit hereunder shall have the right to appeal to the City Council by filing with the City Clerk, within seven days after written notice of the revocation, a statement setting forth the grounds for appeal. The City Council shall set a time and place for hearing the appeal, and notice of the hearing shall be given to the applicant at least 30 days prior to the hearing. The decision of the City Council shall be final and conclusive upon the appeal.

* * *

Section 3. Training. The City Manager is directed to train or have trained and certified all City personnel that may respond to a noise complaint and be required to take measurements as provided herein by regularly hosting trainings and/or sending personnel to trainings for environmental noise measurements.

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Section 4. Repeal. All sections or parts of the Code of Ordinances, all ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict herewith, be and the same, are hereby repealed to the extent of such conflicts.

Section 5. Severability. That should any section or provision of this Ordinance, or any portion thereof, of any paragraph, sentence or word, be declared by a Court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof, as a whole or a part thereof other than the part declared to be invalid.

Section 6. Inclusion into the Code. It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Miami Springs; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

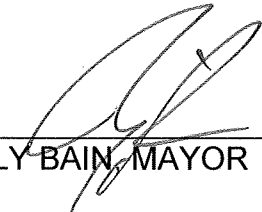
Section 7. Implementation. The City Manager, City Attorney, and City Clerk are hereby authorizes to take such action as may be necessary to implement the purpose and provisions of this Ordinance.

Section 8. Effective Date. This Ordinance shall be in force and take full effect immediately upon its passage and final adoption.

PASSED ON FIRST READING this 14th day of August, 2017, on a motion made by Vice Mayor Best and seconded by Councilwoman Mitchell.

PASSED AND ADOPTED ON SECOND READING this 23rd day of October, 2017, on a motion made by Vice Mayor Mitchell and seconded by Councilman Petralanda.

Vice Mayor Maria Puente Mitchell	<u>YES</u>
Councilman Bob Best	<u>NO</u>
Councilwoman Mara Zapata	<u>YES</u>
Councilman Jaime Petralanda	<u>YES</u>
Mayor Billy Bain	<u>YES</u>



BILLY BAIN, MAYOR

ATTEST:


ERIKA GONZALEZ-SANTAMARIA, MMC
CITY CLERK



APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY MIAMI SPRINGS ONLY:



WEISS, SEROTA, HELFMAN, COLE & BIERMAN, P.L.
CITY ATTORNEY

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