

ORDINANCE NO. 16-1657

AN ORDINANCE OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 54 "OFFENSES AND MISCELLANEOUS PROVISIONS" DIVISION 2 "NOISE"; SPECIFICALLY AMENDING SECTION 54-78 "PROHIBITED NOISES", SPECIFICALLY AMENDING SECTION 54-79 "RESTRICTED NOISES—CLASSIFIED; ENUMERATED"; CREATING SECTION 54-80 "ENFORCEMENT BY CODE COMPLIANCE OFFICER; NOTICE OF VIOLATION; WARNINGS; RESPONSIBILITY TO PROVIDE CURRENT ADDRESS"; CREATING SECTION 54-81 "RESPONSIBILITY FOR COMPLIANCE"; PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, at the September 13, 2016 Town Commission meeting, the Town Commission approved Section 14-32 "Construction schedule and notice" limiting the hours of construction activities which require building permits to the hours between 8:00 am and 6:00 pm Monday through Friday, and prohibiting these activities on Saturdays and Sundays and all federal holidays, subject to a few enumerated exceptions; and

WHEREAS, for consistency with the "Construction schedule and notice" ordinance, Section 54-78 "Prohibited Noises" and Section 54-79 Restricted Noises-Classified-enumerated" must be amended to reflect the prohibition of these construction activities as listed in Section 14-32; and

WHEREAS, Town Administration finds it in the best interest to amend the Town of Surfside Code of Ordinances to clarify the process of enforcement, violations, and warnings for noise violations; and

WHEREAS, the Town Commission held its first public hearing on November 9, 2016 and recommended approval of the proposed amendments to the Code of Ordinances having complied with the notice requirements by the Florida Statutes; and

WHEREAS, the Town Commission has conducted a second duly noticed public hearing on December 13, 2016 and further finds the proposed change to the Code necessary and in the best interest of the community.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA:

Section 1. Recitals. The foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

Section 2. Code Amendment. The Code of Ordinances of the Town of Surfside, Section 54-78 is hereby amended as follows:

Sec. 54-78. Prohibited noises.

The following noises and other noises of the same characteristics, intensity or annoyance shall be prohibited ~~at all times and at all places~~ within the town as follows:

* * *

(9) *Loading, unloading and opening boxes, etc.* The creation of a loud and excessive noise in connection with the loading or unloading of any vehicle, or the opening and destruction of bales, boxes, crates and containers on Saturdays, Sundays, and all Federal Holidays and before 8:00 a.m. and after 6:00 p.m. Monday through Friday;—provided, however, that under emergency conditions the town manager may, in his discretion, grant exceptions thereto.

* * *

(14) *Transport of construction worker personnel.* Shall not cause any excessive, unnecessary and avoidable noise and shall be permitted during the hours of 8:00 a.m. to 6:00 p.m. Monday through Saturday Friday and prohibited on Saturdays, Sundays and all Federal Holidays.

* * *

(17) *Vehicles over one-ton cargo capacity.* The operation or idling of any commercial motor vehicle with more than one-ton carrying capacity, as rated by the manufacturer, shall be prohibited on any public street in or abutting the residential zoning districts within the town except such vehicles shall be permitted during the hours of 8:00 a.m. to 6:00 p.m. Monday through Saturday and prohibited on Sundays and all federal holidays.

(18) Noises associated with cargo vehicles used for transporting construction materials and supplies shall not cause any excessive, unnecessary and avoidable noise and shall be permitted during the hours of 8:00 a.m. to 6:00 p.m. Monday through Friday and prohibited on Saturdays, Sundays and all Federal Holidays.

Section 3. Code Amendment. The Code of Ordinances of the Town of Surfside, Section 54-79 is hereby amended as follows:

Sec. 54-79. - Restricted noises—Classified; enumerated.

Noises, other than those enumerated in section 54-78, because of their nature and characteristics, shall be grouped and classified as follows for the purpose of control and

restrictions: Such noises as described herein shall not be permitted on Saturdays, Sundays and all Federal Holidays and shall be prohibited between the hours of 6:00 p.m. to 8:00 a.m. Monday through Saturday Friday.

* * *

Section 4. Code Amendment. Section 54-80 “Enforcement by code compliance officer; notice of violation; warnings; responsibility to provide current address.” of the Surfside Town Code of Ordinances is hereby created and shall read as follows:

Sec. 54-80. - Enforcement by code compliance officer; notice of violation; warnings; responsibility to provide current address.

(a) Warnings.

(1) Oral warnings. If a code compliance officer observes a violation of Chapter 54, Division 2 “Noise” without a complaint having been made, the officer may first issue one oral courtesy warning per day which will be documented in a report and inform the violator that the violator will be subject to penalties if the violation continues.

(2) Written warnings. A code compliance officer shall first issue a written warning to immediately cease the violation prior to issuing a civil violation notice unless one written warning has been issued in the 12 months preceding the date of violation.

Failure to correct the violation within 15 minutes following the issuance of a written or oral warning shall result in the issuance of a civil violation notice.

A code compliance officer shall not issue a written warning, and instead shall issue a civil violation notice, to any person, entity or establishment who:

- a. In any one day has already been issued a written warning as specified herein; or
- b. In any 12-month period has exceeded the warning limits specified herein; or
- c. Is also being cited for an illegal commercial or nonpermitted nonresidential use in a residential zoning district.

(b) Civil Violation Notice. When the code compliance officer observes a violation of Chapter 54, Division 2 “Noise,” the code compliance officer shall issue a civil violation notice to each person and entity identified in Section 54-81. A courtesy copy of the violation shall be provided to an employee or representative conducting business on the premises. The code compliance officer shall inform the violator to immediately cease the violation. The notice shall be provided pursuant to Section 15-10 of the Town Code.

(c) Appeal. Pursuant to Section 15-12 of the Town Code, an appeal of the civil violation notice shall be accomplished by filing a request in writing setting forth the specific grounds of fact and in law for the appeal, at the address indicated on the civil violation notice, not later than 20 calendar days after the service of the civil violation notice.

(d) Responsibility to provide current address. The party of whom the civil violation notice has been issued shall have a responsibility to provide the current name and address of the person owning or having responsibility for management of the premises.

Section 5. Code Amendment. Section 54-81 "Responsibility for compliance" of the Surfside Town Code of Ordinances is hereby created and shall read as follows:

Sec. 54-81. - Responsibility for compliance.

For purposes of Chapter 54, Division 2 "Noise," any person owning or having responsibility for management of the premises, however temporarily, any person playing music, any person having control of volume knobs or levels or amplification devices, and the business as named on the occupational license, if applicable, shall be liable for compliance and shall be responsible for the violation.

Section 6. Severability. If any section, subsection, clause or provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

Section 7. Conflict. All sections or parts of sections of the Town of Surfside Code of Ordinances in conflict herewith are intended to be repealed to the extent of such conflict.

Section 8. Inclusion in the Code of Ordinances. It is the intention of the Town Commission, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of Surfside Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word "ordinance" may be changed to "Section" or other appropriate word.

Section 9. Effective Date. This ordinance shall become effective upon adoption.

PASSED AND ADOPTED on first reading this 9th day of November, 2016.

PASSED AND ADOPTED on second reading this 13th day of December, 2016.

On Final Reading Moved by: Commissioner Paul

On Final Reading Second by: Commissioner Gielchinsky

FINAL VOTE ON ADOPTION:

Commissioner Daniel Gielchinsky
Commissioner Michael Karukin
Commissioner Tina Paul
Vice Mayor Barry Cohen
Mayor Daniel Dietch

YES
NO
YES
YES
YES



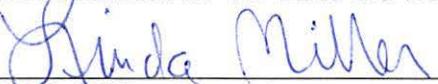
Daniel Dietch, Mayor

ATTEST:



Sandra Novoa, MMC, Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



Linda Miller, Town Attorney