

ORDINANCE NO. 713-15

AN ORDINANCE OF THE MIAMI SHORES VILLAGE COUNCIL AMENDING CHAPTER 10, "HEALTH AND SANITATION" BY AMENDING SECTION 10-5 "MAINTAINING SOURCE OF NOXIOUS ODORS OR GAS, DISTURBING NOISE OR OTHER NUISANCE" RELATING TO CERTAIN PROHIBITIONS AND LIMITATIONS ON USE OF LOUD NOISE DEVICES WITHIN THE VILLAGE; PROVIDING FOR CRIMINAL PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council finds that a series of reports of loud noises near the homes of Village residents has resulted in residents fearing for their safety as well as the safety of their family members and unable to enjoy the privacy of their homes; and

WHEREAS, the United States Supreme Court has recognized that "it can no longer be doubted that government 'has a substantial interest in protecting its citizens from unwelcome noise.'" *Ward v. Rock Against Racism*, 491 U.S. 781, 796, 109 S. Ct. 2746, 2756, 105 L. Ed. 2d 661 (1989) (quoting *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 806, 104 S.Ct. 2118, 2129, 80 L.Ed.2d 772 (1984)); and

WHEREAS, the United States Supreme Court has held that restrictions on noise classified as speech are proper if 1) the restrictions are content-neutral; 2) they are narrowly tailored to serve a significant governmental interest, and 3) they leave open ample alternative channels of communication. *Ward*, 491 U.S. at 791; *see also DA Mortgage, Inc. v. City of Miami Beach*, 486 F.3d 1254, 1266 (11th Cir. 2007); and

WHEREAS, the United States Supreme Court has stated that the government has a great interest when it "seeks to protect the 'the well-being, tranquility, and privacy of the home,'" *Ward*, 491 U.S. at 796 (quoting *Frisby v. Schultz*, 487 U.S. 474, 484 (1988)). However, the government's substantial interest "is by no means limited to that context, for the government may act to protect even such traditional public forums as city streets and parks from excessive noise." *Ward*, 491 U.S. at 796; and

WHEREAS, the restrictions presented in this ordinance amendment are intended to be content and viewpoint neutral and, neutral with respect to time, place and manner restrictions; and

WHEREAS, the United States Supreme Court also recognized that a "special benefit of the privacy all citizens enjoy within their own walls, which the State may legislate to protect, is an ability to avoid intrusions." *Frisby v. Schultz*, 487 U.S. 474, 484-85 (1988). Moreover, the Supreme Court has "repeatedly held that individuals are not required to welcome unwanted speech into their homes and that the government may protect this freedom." *Id.* at 85; and

WHEREAS, the Village Council enacts this ordinance for the primary purpose of protecting and preserving a feeling of safety, well-being, tranquility, and privacy for its residents, while narrowly tailoring the prohibitions contained in this ordinance so as to continue protecting the constitutional right of free expression for all individuals; and

WHEREAS, the proposed ordinance does not prohibit any particular type of speech content and is directed to the protection of public fora and citizenry within the Village; and

WHEREAS, the Village Council finds that this ordinance is in the best interest and welfare of the residents of the Village.

NOW, THEREFORE, BE IT ORDAINED BY THE MIAMI SHORES VILLAGE COUNCIL that:

Section 1. The foregoing “whereas” clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

Section 2. Chapter 10, Sec. 5(b) and Sec. 5(c)(1) of the Village’s Code of Ordinances is hereby amended and shall read as follows:

Sec. 5 (b) It shall be unlawful to maintain any source or cause of noxious odor or gas or other nuisance, or to cause the same to exist. It shall be unlawful for any person to make, continue or cause to be made or continued any noise disturbance. For purposes of this subsection, the term “noise disturbance” shall mean any loud, raucous, or unreasonably disturbing noise which 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.

Sec. 5 (c)(1) *Excessive noise.* Any noise which is of such character, intensity or duration that it constitutes a noise disturbance, as defined in subsection (b).

Section 3. Chapter 10, Sec. 5 (c) shall further be amended by the addition of a new sub-paragraph (3) and the remainder of the sub-paragraphs shall be renumbered accordingly in sequence. Sub-paragraph (3) shall read as follows:

(3) *Megaphones and sound trucks.* The use of a megaphone, defined as an electronic voice amplifying device for public address, or a sound truck, defined as a vehicle with a megaphone attached, is impermissible if it rises to the level of a noise disturbance, as defined in subsection (b). Use of a megaphone or a sound truck in a residential district after dark is presumptively prohibited.

Section 3. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 4. All Sections or parts of Sections of the Code or Ordinances, all Ordinances or part of Ordinances, and all Resolutions or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 5. This Ordinance shall be effective immediately upon adoption at second and final reading.

PASSED on first reading this 6th day of October, 2015.

PASSED and ADOPTED on second and final reading this 3rd day of November, 2015.

Alice Burch, Mayor

ATTEST:

Barbara A. Estep, MMC
Village Clerk

APPROVED AS TO FORM:

Richard Sarafan
Village Attorney

- **Sec. 10-5. - Maintaining source of noxious odors or gas, disturbing noise or other nuisance.**

(a) Definitions. The following words, terms and phrases when used in this section shall have the meaning ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Alarm. Any fire, burglary, motor vehicle, motorboat or civil defense alarm, whistle or similar stationary emergency signaling device.

Construction. Any site preparation, assembly, erection, substantial repair, alteration, demolition or similar action, of public or private rights-of-way, structures, utilities or similar property.

Emergency. Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.

Holidays. In addition to Sundays, those days declared by the laws of the State to be legal holidays, including New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

Motor vehicle. A two or more wheel vehicle, or machine, propelled or drawn by mechanical power, gas or diesel, and used on the public roads and highways in the transportation of people or property.

Motorboat. Any vessel which is propelled or powered by machinery and which is used or capable of being used as a means of transportation on water.

Plainly audible. Refers to noise which is unreasonably loud, raucous or jarring.

Weekends. Shall mean from 6:00 p.m. Friday to 12:00 midnight Sunday.

(b) It shall be unlawful to maintain any source or cause of noxious odor or gas or other nuisance, or to cause the same to exist. It shall be unlawful for any person to make, continue or cause to be made or continued any noise disturbance. For purposes of this subsection, the term "noise disturbance" shall mean any ~~sound in quantities~~ loud, raucous, or unreasonably disturbing noise which 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.

(c) *Specifically prohibited acts.* The following acts are declared to constitute a violation of this section:

(1) *Excessive noise.* Any noise which is of such character, intensity or duration that it constitutes a noise disturbance, as defined in subsection (b).

(2) *Horns, signaling devices, etc.* The sounding of any horn or signaling device on any motor vehicle or motorboat on any street or place in the city, except as a danger warning; the creation by means of any such signaling device of any unreasonably loud or harsh sound; and the sounding of any such device for any unnecessary and unreasonable period of time.

(3) *Megaphones and sound trucks.* The use of a megaphone, defined as an electronic voice amplifying device for public address, or a sound truck, defined as a vehicle with a megaphone attached, is impermissible if it rises to the level of a noise disturbance, as defined in subsection (b). Use of a megaphone or a sound truck in a residential district after dark is presumptively prohibited.

(3) *Radios, televisions, phonographs, musical instruments, etc.* The using, operating, playing, or permitting to be played, used or operated any radio, television, phonograph, musical instrument, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, motor vehicle, motorboat or area in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such radio, television, phonograph, musical instrument or other machine or device between the hours of 11:00 p.m. and 7:00 a.m. on weekdays and 12:00 a.m. and 8:00 a.m. on weekends and holidays in such a manner as to be plainly audible at a distance of 100 feet from the building, structure, motor vehicle, or motorboat in which it is located shall be prima facie evidence of a violation of this section.

(4) *Animals, birds, etc.* The owning, possessing or harboring of any animal or bird which causes, between the hours of 11:00 p.m. and 7:00 a.m., frequent or continued noise which is plainly audible at a distance of 100 feet from the building or structure in which the animal or bird is located.

(5) *Exhausts.* The discharge into the open air of the exhaust of any engine, stationary internal combustion engine, motor vehicle or motorboat engine, except through a muffler or other device which will effectively prevent loud or explosive noise therefrom, except for the testing of emergency generators as required by law during the hours of 8:00 a.m. to 5:00 p.m. weekdays.

(6) *Firearms or explosives.* The use or firing of any explosives, firearms or similar devices, except in an emergency, or using or firing firecrackers, skyrockets or the like without the prior approval of the city manager. Nothing herein shall prohibit the use of nail guns used in construction.

Section 3. Severability. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 4. Conflict. All Sections or parts of Sections of the Code or Ordinances, all Ordinances or part of Ordinances, and all Resolutions or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 5. This Resolution shall be immediately effective upon adoption.

PASSED and ADOPTED this ___ day of _____, 2015.

Alice Burch, Mayor of Miami Shores Village