

**AN ORDINANCE TO REVISE NOISE RESTRICTIONS IMPACTING THE USE OF
CONSUMER FIREWORKS, TO REPEAL ORDINANCES IN CONFLICT, AND SET AN
EFFECTIVE DATE**

The Council of the City of Milton hereby ordains, while in regularly called Council meeting on the 9th day of July, 2018 at 6:00 p.m., as follows:

WHEREAS, pursuant to Sections 1.12(b)(13) and (30) of the City Charter, the City is authorized to provide for the general health, safety and welfare and the prevention of public disturbances;

WHEREAS, pursuant to recent legislation, HB 419, codified at O.C.G.A. § 25-10-2, the City may regulate the use of consumer fireworks as part of any general noise ordinance concerning all manner of sounds or noises;

WHEREAS, the City desires to update its noise ordinance to provide for the regulation of consumer fireworks as permitted by law;

NOW THEREFORE, THE COUNCIL OF THE CITY OF MILTON HEREBY ORDAINS as follows:

SECTION 1. That Chapter 20, Article VII, Section 20-657 of The Code of the City of Milton, Georgia, is hereby amended by placing the existing text in a new paragraph (a) and adding a paragraph (b) containing the following text: “The general prohibition in paragraph (a) includes the use of consumer fireworks that create loud and unreasonable noise, except during the following dates and times: after the time of 10:00 A.M. and up to and including the time of 11:59 P.M. on January 1, the last Saturday and Sunday in May, July 3, July 4, the first Monday in September, and December 31 of each year; and beginning at the time of 12:00 Midnight and up to and including the ending time of 1:00 A.M. on January 1 of each year.”

SECTION 2. That Chapter 20, Article VII, Section 20-664 of The Code of the City of Milton, Georgia, is hereby amended by deleting the existing text and inserting in its place the following text: “Reserved.”

SECTION 3. That all Ordinances, parts of Ordinances, or regulations in conflict herewith are hereby repealed.

SECTION 4. That this Ordinance shall become effective upon a majority vote by the City Council as ratified by the Mayor of the City of Milton, Georgia.

SO ORDAINED this 9th day of July, 2018.

Approved:

Joe Lockwood, Mayor

Attest:

Sudie Gordon, City Clerk

ARTICLE VII. - NOISE CONTROL^[3]

Footnotes:

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Editor's note— Ord. No. 17-09-327, § 1, adopted Sept. 13, 2017, repealed art. VII in its entirety, and enacted new provisions to read as herein set out. Former art. VII, §§ 20-657—20-660, 20-680, 20-681, 20-701, 20-702, 20-722, 20-723, pertained to similar subject matter, and derived from Ord. No. 06-11-16, § 1(ch. 12, art. 5, §§ 2, 4—6), adopted Nov. 21, 2006; Ord. No. 07-04-23, § 1(ch. 12, art. 5, §§ 2, 4—6), adopted April 19, 2007; and Ord. No. 07-04-27, §§ 1—10, adopted April 19, 2007.

Sec. 20-656. - Definitions.

- (a) *Scope.* Words not defined herein shall be construed to have the meaning given by Merriam-Webster's Collegiate Dictionary, eleventh edition.
- (b) *Use and interpretation.* The following shall apply to the use of all words in this ordinance:
 - (1) Words used in the present tense shall include the future tense.
 - (2) Words used in the singular shall include the plural and vice versa.
 - (3) The word "shall" is mandatory.
 - (4) The word "may" is permissive.
- (c) *Terms.*

Acoustic music means music produced by a musical instrument whose sound is not electronically modified.

Amplified sound means sound that is increased in the strength.

Commercial establishment means a business located on property as defined in Commercial property.

Commercial property means property that is zoned and/or developed with nonresidential uses in T-6, T-5, T-4, T-4 Open, T-4 Permissive, C-1, C-2, O-I, MIX, and M-1 zoning districts. It also includes uses permitted with a use permit in other zoning districts listed in section 64-1121, "allowed use chart" that are in the following categories: Commercial, Agricultural, and Institutional Type Uses.

Commercial user means a business that is not an individual property owner or renter that receives compensation for providing products or services.

Construction machinery means machines or tools powered by electricity, fuel, or by hand that is used to construct buildings, roads, walls, and other accessory structures.

Consumer fireworks means any small fireworks devices containing restricted amounts of pyrotechnic composition, designed primarily to produce visible or audible effects by combustion, that comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission as provided for in Parts 1500 and 1507 of Title 16 of the Code of Federal Regulations, the United States Department of Transportation as provided for in Part 172 of Title 49 of the Code of Federal Regulations, and the American Pyrotechnics Association as provided for in the 2001 American Pyrotechnics Association Standard 87-1, and additionally shall mean Roman candles.

Garage machinery means machines or tools powered by electricity, fuel, or by hand that is used in maintaining or building various types of automotive items such as engines of all types, car or truck chassis.

Lawn maintenance machinery means machines or tools powered by electricity, fuel, or by hand that are used to mow, trim, fertilize, seed, till, or other associated actions to maintain lawns, golf courses and other types of landscapes.

Loud and unreasonable noise means any sound or noise, including, but not limited to, music or speech, which is so loud in volume level and of such duration or character as to disturb the comfort, health, peace, safety, quiet enjoyment or repose of one or more persons of ordinary sensibilities.

Mechanical noise means noise produced by lawn maintenance or garage machinery.

Mobile amplification means sound produced that is increased in the strength or amount which is typically electronic, but not solely, and moves such as car stereos.

Outdoor amplification means sound which is typically electronic but not solely, such as a bull horn and but the source is amplified sound located outside the confines of a building or structure.

Residentially used property means property that is zoned and or developed with residential uses in T-6, T-5, T-4, T-4 Open, T-4 Permissive, MIX, AG-1, R-1, R-2, R-2A, R-3, R-3A, R-4, R-4A, R-5, R-5A, R-6, TR, A, A-L, NUP, and CUP.

Sound amplification means sound that is artificially increased in strength, irrespective of the means.

Sound amplification equipment means equipment that artificially increases the strength or amount of sound, typically electronic but not necessarily so.

Waste haulers means companies granted non-exclusive contracts to remove residential and commercial refuse and waste which includes items to be recycled.

([Ord. No. 17-09-327](#), § 1, 9-13-2017)

Sec. 20-657. - Loud, disturbing noises prohibited generally.

- (a) It shall be unlawful for any person to create or assist in creating any loud and unreasonable noise in the city.
- (b) The general prohibition in paragraph (a) includes the use of consumer fireworks that create loud and unreasonable noise, except during the following dates and times: after the time of 10:00 A.M. and up to and including the time of 11:59 P.M. on January 1, the last Saturday and Sunday in May, July 3, July 4, the first Monday in September, and December 31 of each year; and beginning at the time of 12:00 Midnight and up to and including the ending time of 1:00 A.M. on January 1 of each year.

([Ord. No. 17-09-327](#), § 1, 9-13-2017)

Sec. 20-658. - Measurement.

For the purpose of determining db(A)s as referred to in this article, the noise shall be measured on the A-weighting scale on a sound level meter of standard design and quality having characteristics established by the American National Standards Institute.

([Ord. No. 17-09-327](#), § 1, 9-13-2017)

Sec. 20-659. - Activities permitted that produce sound impacting residential life.

- (a) The following activities are permitted in any residentially zoned area of the city or within 300 feet of any residentially occupied structure in any zone of the city:

ACTIVITIES PERMITTED THAT PRODUCE SOUND IMPACTING RESIDENTIAL LIFE

	Monday through Friday	Saturday	Sunday	Federal Holidays
Operation of construction machinery by commercial users*	7:30 a.m. to 7:30 p.m.	9:00 a.m. to 6:00 p.m.		
Lawn maintenance and garage machinery by commercial users*	7:30 a.m. to sunset	9:00 a.m. to sunset		9:00 a.m. to sunset

Operation of construction machinery or garage machinery by individuals on their residential property which registers more than 65 db(A) at the nearest complainant's property line.	7:30 a.m. to 7:30 p.m.	9:00 a.m. to 6:00 p.m.	9:00 a.m. to 6:00 p.m.	9:00 a.m. to 6:00 p.m.
Operation of lawn maintenance machinery by individuals on their residential property.	7:30 a.m. to sunset	9:00 a.m. to sunset	9:00 a.m. to sunset	9:00 a.m. to sunset
Operation of waste haulers	7:30 a.m. to 7:30 p.m.	7:30 a.m. to 7:30 p.m.	7:30 a.m. to 7:30 p.m.	7:30 a.m. to 7:30 p.m.

*The director shall have the discretion to authorize an administrative variance for golf and equestrian uses to adjust the start and stop times, on a case by case basis, if the director believes that such variance is in the best interest of the user and affected property owners and as otherwise authorized by section 20-667.

- (b) Any mechanical noise other than that regulated in subsection (a) which registers more than 65 db(A) at the nearest complainant's property line is a violation.
- (c) This section shall not apply to:
 - (1) Emergency operations designed to protect the public health and safety; or
 - (2) Work by city crews or city contractors in a right-of-way or utility easement when the department responsible for the work has determined that it is necessary to undertake the work.
 - (3) Activities conducted on public playgrounds or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including but not limited to, school athletic and school entertainment events up to 12:00 midnight.

([Ord. No. 17-09-327](#), § 1, 9-13-2017)

Sec. 20-660. - Amplified sound produced within all zoning districts.

- (a) It shall be unlawful to operate or allow operation of any sound amplification to create sounds other than as set forth in the following table:

Amplified Sound that Impacts Residential Life	Sunday – Thursday 8:00 a.m. – 9:00 p.m.	Friday – Saturday 8:00 a.m. – 11:00 p.m.	Any Other Time
Registering up to 50 db(A)*	Permitted	Permitted	Permitted
Registering 50 db(A) up to 55 db(A)*	Permitted	Permitted	Not permitted
Registering 55 db(A) or greater*	Not permitted	Not permitted	Not permitted

Registering up to 50 db(A) for multifamily uses or other residential arrangements where boundary lines cannot be readily determined.**	Permitted	Permitted	Permitted
Registering 50 db(A) up to 55 db(A) for multifamily uses or other residential arrangements where boundary lines cannot be readily determined.**	Permitted	Permitted	Not permitted
Registering 55 db(A) or greater for multifamily uses or other residential arrangements where boundary lines cannot be readily determined.**	Not permitted	Not permitted	Not permitted
In the public right-of-way, including streets or sidewalks, or in city parks without having actual on-site possession of a permit issued by the City of Milton Police Department registering up to 65 db(A) ten feet or more from any electromechanical speaker.***	Permitted	Permitted	Not permitted
In the public right-of-way, including streets or sidewalks, or in city parks without having actual on-site possession of a permit issued by the City Milton Police registering 65 db(A) or greater ten feet or more from any electromechanical speaker.***	Not permitted	Not permitted	Not permitted
The use of mobile amplification registering up to 60 db(A) ten feet or more from the equipment.	Permitted	Permitted	Not permitted
The use of mobile amplification registering 60 db(A) or greater ten feet or more from the equipment.	Not permitted	Not permitted	Not permitted

* As measured anywhere within the boundary line of the nearest residentially occupied property.

** As measured from any point within the interior of another residential unit in the same complex or within the boundary line of the nearest residentially occupied property.

***Sound amplification equipment may not be operated more than ten feet off the ground. In addition to the person operating or allowing the operation of sound amplification equipment in violation of this subsection, the person to whom the permit was issued must be present at the location and during the times permitted and shall be liable for any and all violations.

(b) The limitations on the operation of sound amplification equipment in [section] 20-660(a) shall not apply to the operation of horns, sirens, or other emergency warning devices actually being used in emergency circumstances, or to the operation of sound amplification equipment regulated pursuant to section 20-661.1 or in accordance with a permit issued pursuant to section 20-661.

([Ord. No. 17-09-327](#), § 1, 9-13-2017)

Sec. 20-661. - Permits for additional amplification for residential or commercial uses.

- (a) *[Permit required.]* In order to exceed the sound amplification on private property in section 20-660, a permit for additional amplification is required.
- (b) *Application.* An application for a permit for additional amplification on private property under this section shall be submitted to the City of Milton Police Department at least one business day but no more than thirty calendar days in advance of the planned use. Specify the proposed location of the sound amplification equipment and the date and time that the sound amplification will begin and end. Permits shall be issued on a first come, first served basis. A permit shall not be issued for a location that is within 100 feet of another location for which a permit has been issued for the same time. The application shall designate and provide contact information for an individual person who shall be in control of the sound amplification equipment and ensure that its use complies with the terms of the permit. Activities regulated under section 20-660(a) and section 20-661.1 shall not be eligible for an additional amplification permit under this section.
- (c) *Notice of tentative approval.* When the application meets all necessary requirements, the City of Milton Police Department shall notify applicant of tentative approval, the applicant for a permit shall be responsible for giving written notice of the name, nature, date, and time period of the event, and the name of and contact information for the permit holder to the occupants of each property within 1,000 feet of the property for which the permit has been granted. The notice shall be hand delivered to each occupant or, if the occupant is unavailable, affixed to the front door of the building or business or residential unit at least 72 hours in advance of the event. The permit shall not be actually granted and issued until the applicant submits an affidavit to the City of Milton Police Department that such notices have actually been so delivered.
- (d) *Limits on hours.* Permits for additional amplification at a property, or adjacent properties under common ownership, shall be limited to 15 hours in a calendar year. Permits issued pursuant to this section may allow additional amplification only between 8:00 a.m. and 9:00 p.m. Sunday through Thursday and between 8:00 a.m. and 11:00 p.m. on Friday or Saturday.
- (e) *Sound limits.* In no event shall a permit be granted which allows the creation of sounds registering more than 70 db(A) anywhere within the boundary line of residentially occupied property.
- (f) *Denial; issuance of exceptional permit.* If an applicant has been denied a permit under this section and believes the denial is illegal by virtue of applicable state or federal law, he shall promptly submit a copy of the denied permit application together with a short statement of the reasons he believes he is entitled to a permit to the city manager or his designee. The city manager or his designee shall have the discretion to grant an exceptional permit waiving locational, time, and/or db(A) requirements, upon his determination that the applicant has made a substantial showing of legal entitlement. Any such request for exceptional permit shall be submitted within seven calendar days to the City of Milton Police Department.
- (g) *Violation.* It shall be unlawful to violate the restrictions or requirements of this section or the terms of a permit issued pursuant to this section.

([Ord. No. 17-09-327](#), § 1, 9-13-2017)

Sec. 20-661.1. - Outdoor amplification and music at commercial establishments.

- (a) It shall be unlawful for any commercial establishment (including but not limited to a restaurant, bar, or nightclub) to operate or allow the operation of sound amplification equipment out of doors or directed out of doors or to allow live acoustic music out of doors or directed out of doors other than during the times listed below or so as to create sounds registering in excess of:
 - (1) 85 db(A) Sunday through Thursday between 8:00 a.m. and 9:00 p.m.;
 - (2) 60 db(A) Sunday through Thursday between 9:00 p.m. and 2:00 a.m. the following day;
 - (3) 85 db(A) Friday or Saturday between 8:00 a.m. and 11:00 p.m.; or

- (4) 60 db(A) between 11:00 p.m. and 2:00 a.m. the following day.

For purposes of this section, hotels, motels, other short-term accommodations shall be considered residentially occupied property.

- (b) The decibel limits prescribed in this section shall be measured at the property line of the commercial property at which the sound is being generated.
- (c) An establishment that has been determined to be non-cooperative pursuant to section 20-661.2(e) shall be subject to enhanced civil penalties pursuant to section 20-663 and, after two violations of this section within one year after having been determined to be non-cooperative, shall not operate or allow the operation of sound amplification equipment out of doors or directed out of doors or allow live acoustic music out of doors or directed out of doors for a period of 18 months after the second violation. The 18-month prohibition shall apply to the establishment and the property on which the establishment is located.

([Ord. No. 17-09-327](#), § 1, 9-13-2017)

Sec. 20-661.2. - Chronic commercial noise.

- (a) The purpose of this section is to establish a collaborative process through which the city and a business that has been identified as a chronic source of objectionable noise (i.e., "chronic noise producer") will develop and implement a noise mitigation plan intended to bring the noise to acceptable levels. A chronic noise producer is an establishment that, because of the sound generated by or at the business, is an annoyance to adjacent or nearby residences, lodgings, schools, businesses, or other places where people may congregate with a reasonable expectation of undisturbed activity.
- (b) The chief of police (or designee) shall determine a commercial business as a "chronic noise producer" as described in subsection (a) above. In making such a designation, the chief of police shall take into consideration the following factors:
- (1) The number and frequency of valid noise complaints;
 - (2) The proximity and physical relationship between the business and complaining locations;
 - (3) The severity of sound events, both observed or measured;
 - (4) The times and days of the week of sound events;
 - (5) The business' history of cooperation and efforts to alleviate the problem; and
 - (6) The history and context of the location, including whether the sound producing activity predates the occupation of the complaining locations and whether the sound producing location is located in what is generally recognized as an entertainment area.

Upon designation, the chief of police shall inform the business in writing that it has been designated a chronic noise producer and refer the business to the City of Milton Mayor and City Council along with the information that established the basis for the designation.

- (c) Upon receiving a chronic noise producer referral, the City of Milton Mayor and City Council shall schedule a mandatory initial meeting based on its next regularly scheduled meeting with the business that it has been designated a chronic noise producer. At the initial meeting, the City of Milton Mayor and City Council and the business shall review the information that formed the basis for the designation and any evidence or information concerning the complained of noise provided by the business. Following the initial meeting, the City of Milton Mayor and City Council shall determine whether a mitigation plan is warranted in order to protect public health, safety and welfare. If the City of Milton Mayor and City Council determines that a mitigation plan is not warranted, it shall notify the business and the City of Milton Police Department of that determination and no further action shall be taken under this section.

- (d) If the City of Milton Mayor and City Council determines that a mitigation plan is warranted, the City of Milton Mayor and City Council and the business shall together develop and sign a noise mitigation plan. The plan may include, among other things:
- (1) Restrictions on days of week or hours of noise producing activity;
 - (2) Placement, orientation, and operation of sound producing activity or equipment;
 - (3) Structural changes including but not limited to sound attenuation and baffling;
 - (4) Self-monitoring and reporting requirements;
 - (5) A schedule for implementation; and
 - (6) A schedule for review for possible revision or termination of the plan.
- (e) In the event that a business designated as a chronic noise producer: (i) fails or refuses to participate in good faith in the development of a noise mitigation plan; (ii) refuses to agree to a noise mitigation plan; or (iii) fails to implement or comply with an agreed to noise mitigation plan, the City of Milton Mayor and City Council may designate the business as non-cooperative and shall notify the business and City of Milton Police Department of that determination. Should a business designated as non-cooperative cure the basis for the designation, the City of Milton Mayor and City Council shall remove the designation and notify the business and City of Milton Police Department of that determination.
- (f) In the event that a noise enforcement action is taken against a business that has been designated a chronic noise producer, evidence regarding the business' participation in the development and implementation of and compliance with the noise mitigation plan shall be relevant to any prosecution or administrative or judicial review or appeal of the enforcement action. Specifically, the business' participation and compliance shall be a mitigating factor and may, but is not required to be a justification for dismissing the enforcement action. A business that has been designated by the City of Milton Mayor and City Council as non-cooperative shall not be entitled to the benefits of this subsection unless the designation has been removed.
- (g) Appeals. A business that has been designated a chronic noise producer or non-cooperative may appeal such designation within ten days after receiving notice of such designation. Appeals shall be heard by the city manager or the city manager's designee who shall not be an employee of the City of Milton Police Department or member of the City of Milton Mayor and City Council. The appellant shall have the right to present evidence at said hearing. A ruling on appeal is subject to review in the superior court of Fulton County by proceedings in the nature of certiorari. Any petition for writ of certiorari for review shall be filed with the clerk of superior court within 30 days after notice of the decision has been sent to the appellant.

([Ord. No. 17-09-327](#), § 1, 9-13-2017)

Sec. 20-662. - Animals.

- (a) It shall be unlawful for any person to own, keep or have in his possession, or harbor, any animal which howls, yelps, barks or produces other similar noises uninterruptedly or almost uninterruptedly for more than 15 minutes in duration.
- (b) No person shall act in such a manner as to create noise or sounds that would knowingly cause animals significant distress. Such noise or sounds shall include, but not be limited to, shooting of firearms; use of any combustible or explosive composition, substance or combination of substances; racing of engines and blasting music.

([Ord. No. 17-09-327](#), § 1, 9-13-2017)

Sec. 20-663. - Motor vehicles.

It shall be unlawful to operate or allow the operation of any motor vehicle in the city:

- (1) Which has had its muffler-exhaust and/or other noise-control equipment removed, altered or maintained in such disrepair as to create unreasonably loud and disturbing noises.
- (2) By engaging in jackrabbit starts, spinning tires, racing engines, or other operations which create unreasonably loud and disturbing noises.
- (3) Off the boundaries of a public street for racing or other operations which create unreasonably loud and disturbing noises.

([Ord. No. 17-09-327](#), § 1, 9-13-2017)

Sec. 20-664. - Reserved.

([Ord. No. 17-09-327](#), § 1, 9-13-2017)

Sec. 20-665. - Penalty.

Any person found guilty of violating any provision of this article shall be punished in a manner consistent with the general penalty set forth in section 1-5. A violation of a continuing nature, each day during which it occurs, shall constitute an additional, separate and distinct offense.

([Ord. No. 17-09-327](#), § 1, 9-13-2017)

Sec. 20-666. - Applicability.

In the event there is a conflict between this ordinance [from which this article derives] and any other provision of the Milton Code, the more restrictive noise-based performance standard shall control; except, in the event there is a special use permit containing a noise-based performance standard, the standard in that special use permit shall control.

([Ord. No. 17-09-327](#), § 1, 9-13-2017)

Sec. 20-667. - Variances.

- (a) Variances to any numerical requirements of this article may be granted by the director of community development to any person, upon application, if findings are made by the director that the immediate compliance with such requirement cannot be achieved because of special circumstances rendering immediate compliance unreasonable in light of economic or physical factors, encroachment upon an existing noise source or because of the non-availability of feasible technology or control methods.
- (b) Any such variance or renewal thereof shall be granted by the director of community development only for the minimum time period found to be necessary under the facts and circumstances. The director of community development shall provide in writing the reason for the variance, the starting and ending time of the variance or other pertinent information as to enforce the approved variance.

([Ord. No. 17-09-327](#), § 1, 9-13-2017)

Secs. 20-668-20-742. - Reserved