

ORDINANCE NO. #2006- 23

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, CREATING AND ADOPTING A CODE SECTION ENTITLED "NOISE"; PROVIDING FOR DEFINITIONS; PROHIBITING UNREASONABLY LOUD NOISE; PROVIDING FOR RESPONSIBILITY FOR COMPLIANCE; PROVIDING FOR SOUND LIMITATIONS FOR PUBLIC PROPERTY; PROVIDING FOR EXEMPTIONS; PROVIDING FOR ENFORCEMENT PROCEDURE; PROVIDING FOR CIVIL FINES; PROVIDING VIOLATIONS AND PENALTIES FOR MOTOR VEHICLE ALARMS.; PROVIDING FOR CONFLICTS; PROVIDING FOR INCLUSION; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Doral is currently enforcing the Miami-Dade County Noise Ordinance; and

WHEREAS, the City desires to adopt a comprehensive Ordinance regulating noise, including addressing issues such as hours of construction in the City and car alarms; and

WHEREAS, the City staff reviewed numerous ordinances in order to draft a noise ordinance governing construction noise, car alarm noise and other noise violations that satisfies the needs of the City and its residents; and

WHEREAS, the City Council finds it in the best health, safety and welfare interests of the City to adopt this ordinance regulating noise in the City;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF DORAL:

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

Section 2. That new ordinance of the City of Doral, entitled, "Noise" is hereby created to read as follows:

ARTICLE I NOISE

Sec. 1 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:

Amplified sound means sound augmented by any electronic means that increases the sound level or volume.

Complainant means any owner, lessee, manager or person with a legal interest in a receiving property who reports being disturbed by sound heard inside of a residence or place of business upon the receiving property and not originating therefrom.

Emergency work means any work performed for the purpose of remedying conditions that create an imminent peril to life, health or property.

Plainly audible means the sound can be clearly heard by a person of normal sensibilities using only unaided auditory senses. Plainly audible shall refer to a sound heard at a volume level above that of normal conversation and shall not include sounds which are just barely audible. With respect to music the detection of a rhythmic base reverberating type sound, beat or cadence shall be deemed plainly audible.

Property line means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by a person from that owned by another person, but not including intrabuilding real property divisions.

Receiving property means any residence or place of business into which sound, not originating therefrom, is traveling.

Residence means any occupied room or rooms connected together containing sleeping facilities, including single and multiple-family homes, townhomes, apartments, condominium units, and hotel and motel rooms.

Sound source means the place from which sound emanates, including without limitation a speaker, loudspeaker, or other sound-producing instrument or person.

Uninvited noise means noise not originating on the receiving property.

Unreasonably loud means noise that is plainly audible inside of a receiving property across a property line.

Sec. 2. Unreasonably loud noise prohibited.

It shall be unlawful for any person to make, continue, or cause to be made or continued any unreasonably loud, excessive, unnecessary or unusual noise. The following acts, among others, are declared to be unreasonably loud, excessive, unnecessary or

unusual noises in violation of this section, but this enumeration shall not be deemed to be exclusive, namely:

(a) Horns, signaling devices, etc. The sounding of any horn or signaling device on any automobile, motorcycle, bus or other vehicle on any street or public place of the City of Doral, 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.

(b) Radios, televisions, phonographs, etc. The using, operating, or permitting to be played, used or operated any radio receiving set, television set, musical instrument, phonograph, 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, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such manner as to be plainly audible at a distance of one hundred (100) feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.

(c) Animals, birds, etc. The owning, harboring, possessing or keeping of any dog, animal or bird which causes frequent, habitual or long continued noise which is plainly audible at a distance of one hundred (100) feet from the building, structure or yard in which the dog, animal or bird is located.

(d) Whistles. The blowing of any locomotive whistle or whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of fire or danger or upon request of the proper city or County authorities.

(e) Exhausts. The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, or motor vehicle except through a muffler or other device which will effectively prevent unreasonably loud or explosive noises therefrom.

(f) Defect in vehicle or load. The use of any automobile, motorcycle, jet ski, water bike, recreational vehicle, dirt bike or motor vehicle so out of repair, so loaded or in such manner as to create unreasonably loud or unnecessary grating, grinding, rattling or other noise within a residential area.

(g) Schools, courts, hospitals. The creation of any excessive or unreasonably loud noise on any street adjacent to any school, institution of learning, house of worship or court while the same are in use, or adjacent to any hospital, which unreasonably interferes with the workings of such institutions, or which disturbs or unduly annoys the patients in the hospital, provided conspicuous signs are displayed in such streets indicating that it is a school, hospital or court street.

(h) Hawkers, peddlers. The shouting and crying of peddlers, hawkers, and vendors which disturbs the peace and quiet of the neighborhood.

(i) Noises to attract attention. The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of any unreasonably loud or unnecessary noise to any performance, show, sale, display or advertisement of merchandise.

(j) Loudspeakers, etc. The use or operation on or upon the public streets, alleys and thoroughfares anywhere in this County for any purpose of any device known as a sound truck, loud speaker or sound amplifier or radio or any other instrument of any kind or character which emits there from loud and raucous noises and is attached to and upon any vehicle operated or standing upon such streets or public places aforementioned. It is provided, however, that this subsection is not intended to be construed in a manner that would interfere with the legitimate use of the foregoing loudspeaker type devices in political campaigns.

(k) Power tools and landscaping equipment. The operation of noise-producing lawn mowers, lawn edgers, weed trimmers, blowers, chippers, chain saws, power tools and other noise-producing tools which are used to maintain or at a residence out-of-doors during hours other than those permitted for construction activities pursuant to paragraph (m) below.

(l) Shouting. Any unreasonably loud, boisterous or raucous shouting in any residential area.

(m) Construction. Construction shall be permitted only during the hours set forth herein. All equipment shall be operated in accordance with manufacturer's specifications, shall be in good repair and shall utilize all noise baffling methods as specified by the manufacturer, such activities shall occur only as follows:

1). Between the hours of 7:30 a.m. and 6:30 p.m. and between the hours of 7:30 a.m. and 7:30 p.m. during daylight savings time, in areas zoned as business industrial, or non-residential, except as provided in paragraph 2 herein.

2). Between the hours of 8:00 a.m. and 6:00 p.m. on weekdays and 10:00 a.m. and 4:00 p.m. on Saturdays in areas zoned as residential, or in areas zoned business, industrial or non-residential where one or more of the property lines for the property on which the construction activity is occurring directly abuts or is adjacent to a residentially zoned property. No construction shall be permitted on Sundays or on national holidays.

3) Notwithstanding the provisions set forth in this subsection (m), the building official may authorize, in writing and in advance, any construction activity at a particular site within (m)(l) in this section earlier than 7:30 a.m., but no later than the times permitted under (m)(l). Under emergency circumstances only, the building official may authorize, in writing and in advance, any necessary construction activities earlier than 8:00 a.m. and/or later than 6:00 p.m. on weekdays or later than 4:00 p.m. on weekends on a site within (m)(2) in this subsection. The work authorized by the building official pursuant to this subsection may be conditioned upon notice to surrounding property owners and tenants. Such permits may be granted for a period of time not to exceed three (3) consecutive days. Any approvals granted pursuant to this subsection will not be interpreted as complying any violations of this section that occurred prior to the issuance of the written approval.

Sec. 3 Open-air concerts, musical broadcasts, etc.

(a) Permit required; presumption. It shall be unlawful and a violation of this section for any person, firm, partnership or corporation to play, broadcast or transmit music in such a manner as would reasonably be calculated to attract a crowd or cause numbers of persons to congregate in or on any open space, lot, yard, sidewalk or street, or to permit the same to occur on or from any property owned, leased or occupied by said person, firm, partnership, or corporation, without first having obtained a permit to do so from the City of Doral, Planning And Zoning Department; except no permit shall be required of any person in order to engage in such activity within the residential property wherein such person resides. The use of any amplifier or loudspeaker to play, broadcast or transmit music shall constitute prima facie evidence that the music is being played, broadcasted or transmitted in such a manner as would reasonably be calculated to attract a crowd or cause numbers of persons to congregate.

(b) Permit contents, time restrictions. Permits issued under this section shall specify the date and time during which the activity authorized by the permit may be conducted. No permit shall issue which encompasses more than one (1) calendar date or a span of hours in excess of six (6) hours; nor shall the requested activity commence or continue beyond the hour of 11:00 p.m. in any case.

(c) Permit application information. The application for a permit under this section shall contain the following information:

(1) The name, date of birth, address and telephone number of the person who will be in charge of the activity for which a permit is requested.

(2) The name of the person, firm, partnership or corporation seeking the permit.

(3) The exact date and times for which the permit is sought.

(4) The exact location of the event for which a permit is requested.

(d) Filing application for permit. Applications for a permit required under this section must be submitted to the City of Doral Planning And Zoning Department at least five (5) days prior to the date of the event for which the permit is requested.

(e) Procedures for administering permits. The Director of the Planning and Zoning Department is hereby authorized and directed to promulgate reasonable rules and procedures for the application, issuance and revocation of such permits.

(f) Criteria for permit issuance; posting of bond. Issuance of the permit required under this section shall be based on a determination by the Planning and Zoning Department that the event for which a permit is requested does not constitute a threat to public safety; constitute a danger or impediment to the normal flow of traffic; or constitute a potential disturbance of the peace and quiet of persons outside the premises where the event is located. Subsequent permits under this section may be denied to, or a bond required of, any person known to have been convicted for violations of a previous permit under this section. The bond shall be in an amount sufficient to secure the costs of cleanup and repair or replacement of damage or destruction of property and shall be subject to forfeiture for purposes of paying any judgment against the permit holder which may be entered by a court of competent jurisdiction on account of such property damage or destruction or cleanup cost.

(g) Review of permit denial or revocation. Any person dissatisfied or aggrieved with the decision of the Director of the Planning and Zoning Department with reference to

denial of his application for such permit or the revocation of such permit may, within ten (10) days after such denial or revocation, appeal to and appear before the Special Magistrate; and, upon the affirmance or approval of the action taken by the Director of the Planning and Zoning Department Miami-Dade Police Department, such action shall be final and subject to judicial review by writ of certiorari in accordance with the Florida Rules of Appellate Procedure. In the event the Magistrate or his designee, upon the original review, determines that the applicant is entitled to such permit, then in that event the Director of the Planning and Zoning Department shall immediately issue such permit.

(h) Surrender of permit upon demand. It shall be unlawful and a violation of this section for the person designated in the permit application as being in charge of the event for which a permit is sought to fail or refuse to surrender the permit, on demand, to any State, County, or municipal police officer.

(i) Person designated as being in charge to be present. The person designated in the permit application required in this section as being the person in charge of the event for which the permit is sought must remain at the location of said event during the entire time stated in the permit for which the event is authorized. It shall be unlawful and a violation of this section for said designated person in charge to fail to remain in attendance at the location of the event authorized by the permit for the entire time specified in the permit.

Sec. 4. Responsibility for compliance.

For purposes of this ordinance any person owning or having responsibility for management of a business premises, however temporarily, any performer or disc jockey producing sound upon any business premises, any person playing music, any person having control of volume knobs or levels, and the business as named on the occupational license, shall be jointly and severally liable for compliance with this article and shall be responsible for any violations of this article.

Sec. 5. Motor vehicle alarms.

(a) Definition. The following term shall have the following meaning for purposes of this section: "alarm system" shall mean a motor vehicle siren or horn alarm system contained in or appurtenant to a motor vehicle, designed to activate and sound in the event of a break-in or attempted break-in of the vehicle.

(b) It shall be unlawful for any motor vehicle equipped with an alarm system to activate and emit a siren or horn noise, audible at a distance of 100 feet intermittently or continuously within a period in excess of 30 minutes between the hours of 11:00 p.m. and 7:00 a.m. Any person who has custody of any such offending motor vehicle shall be deemed in violation of this section.

(c) A violation of this section on the public streets or areas within the city is hereby declared a public nuisance which may be abated by the removal of such vehicle upon

authorization of a law enforcement officer. Prior to removing such vehicle, the law enforcement officer shall afford the owner or custodian of such vehicle the opportunity to disconnect or deactivate the alarm system at the scene. Otherwise, the vehicle shall be removed to an authorized facility. The law enforcement agency shall ascertain the name and address of the registered owner of such vehicle and provide written notice by certified mail, return receipt requested, within 24 hours of such removal, the reason(s) for the removal, and the place where such vehicle has been removed. The fees assessed for the removal of the vehicle may be appealed by filing a complaint in the county court and posting with the court a cash or surety bond or security equal to the amount for the removal and/or storage of the vehicle to ensure the payment of such in the event the owner or custodian of the vehicle does not prevail.

(d) A violation of this section on private property shall cause the person who owns or has custody of the offending vehicle to be fined \$50.00 Any duly designated law enforcement officer and/or code compliance officer is authorized and empowered to enter without force upon private property in order to detect and issue a citation or notice of violation to and upon the owner or custodian of the offending motor vehicle. The citation or notice of violation may be appealed in accordance with the procedures set forth in this Code.

(e) It shall not be a violation of this section if it is determined by the law enforcement officer and/or code compliance officer that the siren or horn noise has been triggered by the unauthorized opening of the hood, truck or door(s) of the vehicle, by the breaking or attempted breaking of a window or by lightning, thunderstorms, or severe weather conditions.

Sec. 6 Additional sound limitations for public property.

No person shall, on any public street or sidewalk, beach or park use, operate or play any radio, phonograph, stereo set, tape or CD player, television, sound amplifier, or other electronic audio device that produces or reproduces amplified sound, at a level that is plainly audible at a distance of more than ten feet from the sound source.

Sec. 7 Exemptions.

The following uses and activities shall be exempt from the requirements of these sections and from the enforcement procedures in this article:

(1) Cries for emergency assistance and warning calls.

(2) Radios, sirens, horns and bells and other sounds created by police, fire and other emergency response vehicles.

(3) Parades, fireworks displays, special events and other activities for which a permit has been obtained from the city, within such hours and in accordance with such restrictions as may be imposed as conditions for the issuance of the permit.

(4) Activities on or in municipal and school athletic facilities and on or in publicly owned property and facilities, when such activities have been authorized by the public authority owning the properties or facilities or their agents; except where such publicly owned properties are under private operation pursuant to a lease or concession agreement.

(5) Fire alarms and burglar alarms, bells and chimes of churches or other religious institutions; however false burglary alarms shall be subject to enforcement procedures and penalties as set forth in this code.

(6) Locomotives and other railroad equipment and aircraft, to the extent that city regulation is preempted by federal law.

(7) Noises resulting from emergency work.

(8) Noise generated by motor vehicles as defined in F.S. § 320.01 when operated and equipped in accordance with requirements set forth in the Florida Statutes.

(9) Noise resulting from the operation of vessels when operated in compliance with the decibel limitations in F.S. § 327.65. However, noise exceeding the limitations set forth in F.S. § 327.65 shall be subject to enforcement and penalties as set forth in F.S. ch. 327.

Sec. 8 Enforcement by code compliance officers; notice of violation.

If a code compliance officer receives a complaint from a complainant regarding a violation of this article, he shall investigate the complaint and determine whether the violation exists. If the code compliance officer then observes a violation of this article, the code compliance officer shall inform the violator that he must immediately cease the violation and will be subject to additional penalties if the violation continues and issue a notice of violation to the violator as provided in this Code.

Sec. 9 Civil fines for violation; appeals.

(a) The following civil fines shall be imposed for violations of this chapter:

(1) First offense, \$100.00 fine.

(2) Second offense and each offense thereafter (within one year of the first offense), \$500.00 fine.

For purposes of this section, "offense" shall mean a notice of violation that has not been contested timely or a finding of violation by a special magistrate. A person may receive a separate notice of violation once every hour if a violation has occurred at any time within that period. Each notice of violation shall constitute a separate offense for which a separate fine may be imposed.

(b) As an alternative or additional means of enforcement, the city may institute proceedings to revoke or suspend an occupational license and/or certificate of use or seek injunctive relief. Furthermore, in cases of recurring violations, the code compliance officer may issue a citation for prosecution before the special magistrate as provided in this code wherein, upon a finding of violation by the special magistrate, a per diem fine may be imposed. A violation shall be considered recurring when a person or entity has received three notices of violation within a period of one month.

Sec. 10 Nuisance.

Any violation of this article shall constitute a nuisance. The city attorney may bring suit on behalf of the city, or any affected citizen may bring suit in his name, against the person or persons causing or maintaining the violation, and against the owner/agent of the building or property on which the violation exists. Relief may be granted according to the terms and conditions of F.S. § 60.05, relating to abatement of nuisances. In any such action, the city or affected citizen, if the prevailing party, shall be awarded costs, including reasonable attorney's fees.

Section 3. Severability. That if any section, subsection, sentence, clause, phrase, work or amount of this ordinance shall be declared unconstitutional or invalid by competent authority, then the remainder of the ordinance shall not be affected thereby, and shall remain in full force and effect.

Section 4. Repeal of Conflicting Provisions. That all ordinances or parts of ordinances or resolutions of the County Code made inconsistent or in conflict herewith shall be and they are hereby repealed in their entirety as there is conflict or inconsistency.

Section 5. Inclusion in Code. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the City of Doral Code; 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 6. Effective Date. This Ordinance shall become effective upon adoption on second reading.

The foregoing Ordinance was offered by Councilman Van Name who moved its adoption. The motion was seconded by Councilman DiPietro and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Peter Cabrera	Absent
Councilmember Michael DiPietro	Yes
Councilwoman Sandra Ruiz	Yes
Councilmember Robert Van Name	Yes

PASSED AND ADOPTED upon first reading the 14th day of September, 2006.

PASSED AND ADOPTED upon second reading the 11th day of October, 2006.



JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



BARBARA HERRERA, CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE SOLE USE OF THE CITY OF DORAL:



JOHN J. HEARN, CITY ATTORNEY