

ORDINANCE NO. 2008-36-172

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, REPEALING SECTION 21-28 OF THE MIAMI-DADE COUNTY CODE, AS MADE APPLICABLE TO THE CITY OF MIAMI-GARDENS"; CREATING A NEW ORDINANCE ENTITLED "NOISE ORDINANCE"; PROVIDING FOR DEFINITIONS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR PENALTIES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City has received a number of complaints relating to excessive noise, and

WHEREAS, excessive and raucous noises affect the health, safety and welfare of the citizens, and

WHEREAS, it is in the best interest of the City to provide for regulations relating to noise within the City,

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

SECTION 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas Clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

SECTION 2. REPEAL: Section 21-28 of the Miami Dade County Code, as made applicable to the City of Miami Gardens, is hereby Repealed in its entirety.

SECTION 3. PURPOSE: This ordinance is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the residents of Miami Gardens through the reduction, control, and prevention of loud and raucous noise, or any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity.

SECTION 4. FINDINGS.

(a) Loud and raucous noise degrades the environment of Miami Gardens to a degree that:

- (1) Is harmful to the health, welfare, and safety of its inhabitants and visitors;
- (2) Interferes with the comfortable enjoyment of life and property;
- (3) Interferes with the well being, tranquility, and privacy of the home; and
- (4) Both causes and aggravates health problems.

(b) Both the effective control and the elimination of loud and raucous noise are essential to the health and welfare of Miami Gardens' inhabitants and visitors, and to the conduct of the normal pursuits of life, including recreation, work, and communication.

(c) The use of sound amplification equipment creates loud and raucous noise that may, in a particular manner and at a particular time and place, substantially and unreasonably invade the privacy, peace, and freedom of inhabitants of, and visitors to Miami Gardens.

(d) Certain short-term easing of noise restrictions is essential to allow the construction and maintenance of structures, infrastructure, and other elements necessary for the physical and commercial vitality of Miami Gardens.

SECTION 5. SCOPE

This ordinance applies to the control of all sound originating within the jurisdictional limits of Miami Gardens.

SECTION 6. DEFINITIONS.

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

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

Emergency work means any work performed for the purpose of preventing or alleviating physical trauma or property damage, whether actually caused or threatened by an emergency, or work by private or public utilities when restoring utility service.

Noise sensitive area includes, but is not limited to, a posted area where a school, hospital, nursing home, church, court, public library, or similar institution is located.

Person means any individual, firm, association, partnership, joint venture, or corporation.

Public right-of-way means any street, avenue, boulevard, highway, sidewalk, alley, or similar place normally accessible to the public, which is owned or controlled by a government entity.

Public space means any real property or structures on real property, owned by a government entity and normally accessible to the public, including but not limited to parks and other recreational areas.

Residential area means any real property, which contains a structure or building in which one, or more persons reside, if the structure or building is properly zoned, or is legally nonconforming, for residential use in accordance with the terms and maps of Miami Gardens' Zoning Articles.

SECTION 7. GENERAL PROHIBITION

(a) No person shall make, continue, or cause to be made or continued:

- (1) Any unreasonably loud or raucous noise;
 - (2) Any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity, within Miami Gardens; or,
 - (3) Any noise which is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons within the neighborhood from which said noises emanate, or as to unreasonably interfere with the peace and comfort of neighbors or their guests, or operators or customers in places of business, or as to detrimentally or adversely affect such residences or places of business.
- (b) Factors for determining whether a sound is unreasonably loud and raucous include, but are not limited to, the following:
- (1) The proximity of the sound to sleeping facilities, whether residential or commercial;
 - (2) The land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;
 - (3) The time of day or night the sound occurs;
 - (4) The duration of the sound; and
 - (5) Whether the sound is recurrent, intermittent, or constant.

SECTION 8. NOISES PROHIBITED.

The following acts are declared to be per se violations of this ordinance. This enumeration does not constitute an exclusive list:

- (a) *Unreasonable noises:* The unreasonable making of, or knowingly and unreasonably permitting to be made, any unreasonably loud, boisterous or unusual noise, disturbance, commotion or vibration in any boarding facility, dwelling, place of business or other structure, or upon any public street, park, or other place or building. The ordinary and usual sounds, noises, commotion or vibration incidental to the operation of these places when conducted in accordance with the usual standards of practice and in a manner which will not unreasonably disturb the peace and comfort of adjacent residences or which will

not detrimentally affect the operators of adjacent places of business or unreasonably disturb adjacent residents are exempted from this section.

(b) *Vehicle horns, signaling devices, and similar devices:* The sounding of any horn, signaling device, or other similar device, on any automobile, motorcycle, or other vehicle on any right-of-way or in any public space of Miami Gardens for more than ten consecutive seconds. The sounding of any horn, signaling device, or other similar device, as a danger warning is exempt from this prohibition.

(c) *Non-emergency signaling devices:* Sounding or permitting sounding of any amplified signal from any bell, chime, siren, whistle or similar device, intended primarily for non-emergency purposes, from any place for more than ten consecutive seconds in any hourly period. The reasonable sounding of such devices by houses of religious worship, seasonal contribution solicitors, or by law enforcement for traffic control purposes are exempt from the operation of this provision.

(d) *Emergency signaling devices:* The intentional sounding or permitting the sounding outdoors of any emergency signaling device including fire, burglar, civil defense alarm, siren, whistle, or similar emergency signaling device, except in any emergency or except as provided in Subsections a. and b., below.

1. Testing of an emergency signaling device shall occur between 7:00 a.m. and 8:00 p.m. Any testing shall use only the minimum cycle test time. In no case shall such test time exceed five minutes. Testing of the emergency signaling system shall not occur more than once in each calendar month.

2. Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm, shall terminate within 15 minutes of activation unless an emergency exists.

(e) *Radios, televisions, boom boxes, phonographs, stereos, musical instruments, and similar devices:* The use or operation of a radio, television, boom box, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of neighbors and passers-by, or is plainly audible at a distance of 50 feet from any person in a commercial, industrial area, or public space. The use or operation of a radio, television, boom box, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and unreasonably disturbs the peace, quiet,

and comfort of neighbors in residential or noise sensitive areas, including multi-family or single-family dwellings.

(f) *Loudspeakers, amplifiers, public address systems, and similar devices:* No loudspeakers, amplifiers, public address systems or similar devices shall be permitted without a permit from the Police Department. Even with a permit, the unreasonably loud and raucous use or operation of a loudspeaker, amplifier, public address system, or other device for producing or reproducing sound between the hours of 10:00 p.m. and 7:00 a.m. on weekdays, and 10:00 p.m. and 10:00 a.m. on weekends and holidays is prohibited in the following areas:

1. Within or adjacent to residential or noise-sensitive areas; and
2. Within public space if the sound is plainly audible across the real property line of the public space from which the sound emanates, and is unreasonably loud and raucous.

This shall not apply to any public performance, gathering, or parade for which a permit has been obtained from a governmental agency with jurisdiction.

(g) *Yelling, shouting, and similar activities:* Yelling, shouting, hooting, whistling, or singing in residential or noise sensitive areas or in public places, between the hours of 10:00 p.m. and 7:00 a.m., or at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable persons of ordinary sensitivities.

(h) *Animals and birds:* Unreasonably loud and raucous noise emitted by an animal or bird for which a person is responsible. A person is responsible for an animal if the person owns, controls or otherwise cares for the animal or bird. Sounds made by animals or birds in animal shelters, kennels, veterinary hospitals, pet shops, or pet kennels licensed under and in compliance with any applicable licensing and permitting provisions are exempt from this subsection.

(i) *Loading or unloading merchandise, materials, equipment:* The creation of unreasonably loud, raucous, and excessive noise in connection with the loading or unloading of any vehicle at a place of business or residence.

(j) *Construction or repair of buildings, excavation of streets and highways:* The construction, demolition, alteration or repair of any building or the excavation of streets and highways other than between the hours of 7:00 a.m. and 8:00 p.m. on weekdays. In cases of emergency, construction or repair noises are exempt from this provision. In non-emergency situations, the city manager, or his/her designee may issue a permit, upon application, if the city manager, or his/her designee, determines that the public health and safety, as affected by loud and

raucous noise caused by construction or repair of buildings or excavation of streets and highways between the hours of 8:00 p.m. and 7:00 a.m. will not be impaired, and if the city manager, or his/her designee, further determines that loss or inconvenience would result to a party in interest. The permit shall grant permission in non-emergency cases for a period of not more than three days. The permit may be renewed once for a period of three days or less.

(k) *Noise sensitive areas--Schools, courts, churches, hospitals, and similar institutions:* The creation of any unreasonably loud and raucous noise adjacent to any noise sensitive area while it is in use, which unreasonably interferes with the workings of the institution or which disturbs the persons in these institutions; provided that conspicuous signs delineating the boundaries of the noise sensitive area are displayed in the streets surrounding the noise sensitive area.

(l) *Blowers, and similar devices:* In residential or noise sensitive areas, between the hours of 8:00 p.m. and 7:00 a.m., the operation of any noise-creating blower, power fan, or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, provided that the noise is unreasonably loud and raucous and can be heard across the property line of the property from which it emanates. This section does not apply to the operation of a generator in the aftermath of a natural disaster.

(m) *Commercial establishments adjacent to residential property:* Unreasonably loud and raucous noise from the premises of any commercial establishment, including any outdoor area which is part of or under the control of the establishment, between the hours of 10:00 p.m. and 7:00 a.m. which is plainly audible at a distance of five feet from any residential property.

SECTION 9. EXEMPTIONS.

Sounds caused by the following are exempt from the prohibitions set out in Section 8 above:

(a) Motor vehicles on traffic ways of Miami Gardens, provided that the prohibition of section 8(b) above continues to apply.

(b) Repairs of utility structures, which pose a clear and immediate danger to life, health, or significant loss of property.

(c) Sirens, whistles, or bells lawfully used by emergency vehicles, or other alarm systems used in case of fire, collision, civil defense, police activity, or imminent danger, provided that the prohibition contained in section 8(d) above continues to apply.

- (d) The emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work.
- (e) Repairs or excavations of bridges, streets or highways by or on behalf of any local government, the state, or the federal government, between the hours of 8:00 p.m. and 7:00 a.m., when public welfare and convenience renders it impractical to perform the work between 7:00 a.m. and 8:00 p.m.
- (f) Outdoor school and playground activities. Reasonable activities conducted on public playgrounds and public 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.
- (g) Other outdoor events. Outdoor gatherings, public dances, shows and sporting events, and other similar outdoor events, provided that a permit has been obtained from the appropriate permitting authority.
- (h) City-initiated events that are approved by the City Council.
- (i) Noise attendant to an existing commercial use that either predates the effective date of this ordinance or a subsequent development, shall be presumed to be in prima facie compliance with the terms of this ordinance.

SECTION 10. ENFORCEMENT

- (a) The following individuals shall enforce this ordinance: City of Miami Gardens' Code Enforcement Officers and City of Miami Gardens Police Officers will have the primary responsibility for the enforcement of the noise regulations contained herein. Nothing in this ordinance shall prevent a code enforcement or police officer from obtaining voluntary compliance by way of warning, notice, or education.
- (b) If a person's conduct would otherwise violate this ordinance and consists of speech or communication; of a gathering with others to hear or observe speech or communication; or of a gathering with others to picket or otherwise express in a non-violent manner a position on social, economic, political, or religious questions, then the person must be ordered to, and have the opportunity to, move, disperse, or otherwise remedy the violation prior to a citation being issued.

SECTION 11. PENALTIES

Any person convicted of a violation of this section shall be punished by a fine not to exceed five hundred dollars (\$500.00), or by imprisonment not to exceed sixty (60) days, or both, in the discretion of the County Court.

SECTION 12. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

SECTION 13. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 14. INCLUSION IN THE CODE: It is the intention of the City Council of the City of Miami Gardens that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miami Gardens and that the sections of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed; provided, however, that Section 1 hereof or the provisions contemplated thereby shall not be codified.

SECTION 15. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

PASSED ON FIRST READING ON THE 12th DAY OF NOVEMBER 2008.

PASSED AND ADOPTED on second reading this 10TH day of DECEMBER, 2008


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, MMC, CITY CLERK

Reviewed by SONJA K. DICKENS ESQ.
City Attorney

SPONSORED BY: Councilman Oliver Gilbert III

MOVED BY: Councilman Gilbert

SECONDED BY: Vice Mayor Watson

VOTE: 7-0

Mayor Shirley Gibson	<u> x </u> (Yes)	<u> </u> (No)
Vice Mayor Barbara Watson	<u> x </u> (Yes)	<u> </u> (No)
Councilman Melvin L. Bratton	<u> x </u> (Yes)	<u> </u> (No)
Councilman Aaron Campbell	<u> x </u> (Yes)	<u> </u> (No)
Councilman André Williams	<u> x </u> (Yes)	<u> </u> (No)
Councilwoman Sharon Pritchett	<u> x </u> (Yes)	<u> </u> (No)
Councilman Oliver Gilbert, III	<u> x </u> (Yes)	<u> </u> (No)

City of Miami Gardens

1515 NW 167th Street
Bldg. 5, Suite 200
Miami Gardens, Florida 33169



Mayor Shirley Gibson
Vice Mayor Barbara Watson
Councilman Melvin L. Bratton
Councilman Aaron Campbell Jr.
Councilman Oliver Gilbert III
Councilwoman Sharon Pritchett
Councilman André Williams

Agenda Cover Page

Meeting Date: December 10, 2008

Fiscal Impact: No Yes

(If yes, explain in Staff Summary)

Funding Source:

Contract/P.O. Requirement: Yes No

Sponsor Name/Department:

Councilman Oliver G. Gilbert, III

Public hearing

Ordinance

1st Reading

Advertising requirement: Yes No

RFP/RFQ # _____

Quasi-Judicial

Resolution

2nd Reading

Yes No

Yes No

Title

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, REPEALING SECTION 21-28 OF THE MIAMI-DADE COUNTY CODE, AS MADE APPLICABLE TO THE CITY OF MIAMI-GARDENS"; CREATING A NEW ORDINANCE ENTITLED "NOISE ORDINANCE"; PROVIDING FOR DEFINITIONS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR PENALTIES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR AN EFFECTIVE DATE.

Staff Summary

Excessive and raucous noises affect the health, safety and welfare of the City's residents. Recently, the City has received a number of complaints relating to excessive noise, and it revealed that it would be beneficial if the City enacted its own Noise Ordinance. The purpose of the attached Ordinance is to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the residents of Miami Gardens through the reduction, control, and prevention of loud and raucous noise, or any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of the City's residents.

Recommendation: It is recommended that the City Council adopt the attached Ordinance.