

ORDINANCE NO. 2005-18

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING CHAPTER 17 ENTITLED ANOISE@ OF THE VILLAGE CODE BY REPEALING SECTIONS 17-1 THROUGH AND INCLUDING SECTION 17-7 OF CHAPTER 17 AND ADOPTING NEW SECTIONS 17-1 THROUGH AND INCLUDING SECTION 17-7 OF CHAPTER 17 ANOISE@ PROVIDING COMPREHENSIVE REGULATIONS AND RESTRICTIONS ON ALL ACTIVITIES CREATING NOISE IN THE VILLAGE AND PROVIDING SPECIAL EVENT PERMIT REGULATIONS; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council wishes to amend Chapter 17 ANoise@ of the Code of Key Biscayne, Florida to enhance the regulations and restrictions on noise within the limits of the Village;

WHEREAS, the Village Council appointed the Noise Ordinance Review Committee (the ACommittee@) to consider noise issues, accept public comment, and recommend revisions to the noise ordinance; and

WHEREAS, the Committee has completed its task and has made its recommendations to the Village Council; and

WHEREAS, the Village Council finds that the amendment of Chapter 17 ANoise@ as provided herein is in the best interest of the Village.

IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the above stated recitals is hereby adopted and confirmed.

Section 2. **Repeal.** That the Code of Key Biscayne, Florida is hereby amended by repealing Section 17-1 through and including Section 17-7 of Chapter 17 ANoise@, which reads as set forth in Exhibit AA@ attached hereto and incorporated herein.

Section 3. **Code Amended.** That the Village Code of the Village of Key Biscayne, Florida, is hereby amended by revising Chapter 17 ANoise@, to consist of new Sections 17-1 through and including Section 17-7 to read as follows:

Sec. 17-1. Definitions.

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

- (1) Construction. Any site preparation, assembly, erection, substantial repair, alteration, demolition or similar action, on public or private rights-of-way, structures, utilities or property.
- (2) Emergency. Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention, including, but not limited to, the declaration by the government of a Tropical Storm Warning, Tropical Storm Watch, Hurricane Warning, or Hurricane Watch for the Village of Key Biscayne, including that period of time after such event where essential public services including, but not limited to, utilities, are unavailable.
- (3) Holidays. New Year's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Columbus Day, Washington's Birthday (the third Monday in February), Martin Luther King, Jr. Birthday (the third Monday in January), Thanksgiving Day, and Christmas Day.
- (4) Leaf Blower. Any device used, designed or operated to produce a current of air by fuel, electricity or other means to push, propel or blow lawn, tree or plant cuttings, refuse or debris.
- (5) 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.
- (6) Motorboat. Any vessel equipped with machinery for propulsion, irrespective of whether the propulsion machinery is in actual operation.
- (7) Noise Disturbance. Any sound in quantities or at levels 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. Any sound generated by activities

described in Section 17-2, outside the permitted hours, shall be deemed a Noise Disturbance.

(8) Noise Receptor Site. An area, parcel, building, structure, hotel room or unit, or dwelling unit which is the recipient of noise emanating from another area, parcel, building, structure, hotel room or unit, or dwelling unit.

(9) Plainly Audible. A noise which is unreasonably loud, raucous or jarring.

(10) Special Event. Activities or events approved by the Village pursuant to subsections 17-4(12) and 30-102(e) of the Village Code.

(11) Sound Level Meter. An instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter and A- Weighted sound level network with fast and slow integrating time constants, used to measure sound pressure levels. The sound level meter should be capable of measuring the A-Weighted equivalent sound level (L_{eq}) and maximum sound levels, and shall have data logging capabilities. The meter shall be a Type 1 sound level meter as defined by ANSI Standard S1.4-1983 (R2001), *Specifications for Sound Level Meters*.

(12) Vessel. A boat as referenced in Section 1(b), Art. VII of the Florida Constitution and includes every description of watercraft, barge and air boat, other than a seaplane on the water, used or capable of being used as a means of transportation on the water.

Sec 17-2. Prohibited Noise Disturbances.

Section 17-2 shall be applicable to all property within the Village limits, except properties designated within Hotel Resort (HR), Planned Unit Development (PUD), or Private Club (PC) zoning districts, which shall be governed solely by Section 17-3.

Except as otherwise provided herein, it shall be unlawful for any person to make, continue or cause to be made or continued any Noise Disturbance. The following activities are declared to be a Noise Disturbance and shall constitute a violation of this chapter:

(1) Horns, Signaling Devices, etc. The sounding of any horn or signaling device on any Motor Vehicle or Motorboat, except as a danger warning or the creation by means of any such signaling device of any Plainly Audible sound or the sounding of any such device for any unnecessary and unreasonable period of time.

(2) Sound Amplifying Equipment and Musical Instruments. The using, operating, playing, or permitting to be played, used or operated any radio, television, phonograph, musical instrument, loudspeaker, loudspeaker system, sound amplifier, or other machine or device for the producing or reproducing of sound so 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, or the operation of any such radio, television, phonograph, musical instrument, loudspeaker,

loudspeaker system, sound amplifier, or other machine or device outside the following permitted hours:

- (a) 7:00 a.m. to 11:00 p.m. on Monday, Tuesday, Wednesday, and Thursday;
- (b) 7:00 a.m. to 12:00 a.m. on Friday;
- (c) 8:00 a.m. to 12:00 a.m. on Saturday and Holidays;
- (c) 8:00 a.m. to 11:00 p.m. on Sunday,

in such a manner as to be Plainly Audible at a distance of 100 feet from the building, structure, Motor Vehicle, Motorboat or area in which it is located.

(3) Set Up and Breakdown of Certain Events. The creation of any Plainly Audible noise during the setting up and breaking down of parties, shows, exhibitions and events or any other gathering outside the permitted hours in paragraph (2) above.

(4) Animals, Pets, Birds, etc. The owning, possessing or harboring of any animal, pet or bird which causes frequent or continued noise which is Plainly Audible from any property or residential dwelling unit other than the property or residential dwelling unit where the animal, pet, or bird is located.

(5) Exhausts. The discharge into the open air of the exhaust of any engine; stationary internal combustion engine (including power generators), Motor Vehicle or Motorboat engine, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

(6) Idling of Engines. The idling of any internal combustion engine outside the permitted hours in paragraph (9) below.

(7) Construction. The creation of any Plainly Audible sound in connection with Construction outside the following permitted hours:

- (a) 7:00 a.m. to 6:30 p.m. on Monday, Tuesday, Wednesday, Thursday and Friday.

(8) 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 unless approved in advance by the Village Manager in accordance with the procedures set forth in Section 17-5.

(9) Loading or Unloading. The creation of any Plainly Audible sound in connection with the loading, unloading, opening, closing or other handling of boxes, crates, containers, refuse cans or other objects outside the following permitted hours:

- (a) 7:00 a.m. to 6:30 p.m. on Monday, Tuesday, Wednesday, Thursday and Friday;
- (b) 8:00 a.m. to 6:30 p.m. on Saturday, Sunday and Holidays.

(10) Commercial Maintenance Equipment. The commercial operation of maintenance equipment (including but not limited to pressure cleaners, blowers,

sweepers or vacuums) which creates a Plainly Audible sound within 100 feet of any residential area outside the following permitted hours:

- (a) 7:00 a.m. to 6:30 p.m. on Monday, Tuesday, Wednesday, Thursday and Friday.

(11) Power Tools and Landscaping Equipment. The operation of noise-producing lawn mowers, lawn edgers, weed trimmers, chippers, Leaf Blowers, chain saws, power tools and other noise-producing tools outside the following permitted hours:

- (a) 8:00 a.m. to 6:30 p.m. on Monday, Tuesday, Wednesday, Thursday and Friday;
- (b) 10:00 a.m. to 6:30 p.m. on Saturday, Sunday, and Holidays only for non-commercial operation of noise producing tools.

(12) Defect In or Condition of Motor Vehicle, Vessel or Motorboat. The use of any Motor Vehicle, Vessel, or Motorboat so out of repair, maintained in such condition or loaded in such a manner as to create a Plainly Audible grating, grinding, rattling or other sound. This prohibition also precludes the use of sail cables and riggings in a manner which creates a Plainly Audible sound.

(13) Hawkers/Peddlers. The shouting and crying of peddlers, hawkers, and vendors.

(14) Schools, Courts, Hospitals, Places of Religious Worship. The creation of any noise on any street or place adjacent to any school, court, hospital or place of religious worship, while the same are in use, which unreasonably interferes with the operation of such institution or which disturbs or unduly annoys the persons within such institutions, excluding those located in single family districts and single family and two-family districts.

(15) Aircraft. The use of any mechanical loudspeakers or amplifiers in any moving airplane or any other kind of aircraft, over any part of the Village, for advertising or other purposes.

(16) Open Air Concerts, Musical Broadcasts, etc. The playing, broadcasting or transmitting of music in such a manner as would reasonably be calculated to attract a crowd or cause persons to congregate in or on any open space, lot, yard, park, sidewalk or street, or to permit the same to occur on or from any property owned, leased or occupied by said person(s).

(17) Leaf Blowers. The use or operation of any Leaf Blower unless said machine has a stamp from the manufacturer or testing laboratory certifying a rating of no more than sixty-five (65) decibels. From and after May 24, 2006, the use and operation of any Leaf Blower unless said machine has a stamp from the manufacturer certifying a rating of no more than sixty-five (65) decibels and incorporates the best available technology for the reduction of noise.

(18) Fixed Mechanical Equipment. The creation of a Plainly Audible sound from the use, operation, or maintenance of fixed mechanical equipment, including but not limited to swimming pool filtration system pumps and air conditioning or ventilation systems.

(19) False Burglar Alarms. False Burglar Alarms as defined in Section 17-8.

Sec. 17-3. Noises Exceeding Established Decibel Levels.

Section 17-3 shall be applicable to all property within the Hotel Resort (HR), Planned Unit Development (PUD), or Private Club (PC) zoning districts. Except as otherwise provided, the generation of any sound in excess of the permitted decibel level established herein shall be deemed a violation of this chapter.

(1) Permitted Decibel Level. The permitted decibel level for noise which emanates from indoor or outdoor activities or outdoor operations (including those conducted from a tent or any other partial enclosure) as measured outdoors at the property line of the Noise Receptor Site which is closest to the site from which the noise emanates, shall at all times be no more than sixty-five (65) decibels as measured with a calibrated Sound Level Meter. Except as otherwise permitted below, any noise exceeding 65 dBA shall constitute a violation of this chapter.

(2) Exceptions. The following activities are permitted to exceed the permitted decibel level only during the hours expressly identified in this section.

(a) Set Up and Breakdown of Certain Events. The creation of noise in excess of the permitted decibel level during the setting up and breaking down of parties, shows, exhibitions and events or any other gathering during the following hours:

- (i) 7:00 a.m. to 11:00 p.m. on Monday, Tuesday, Wednesday, and Thursday;
- (ii) 7:00 a.m. to 12:00 a.m. on Friday;
- (iii) 8:00 a.m. to 12:00 a.m. on Saturday and Holidays;
- (iv) 8:00 a.m. to 11:00 p.m. on Sunday.

(b) Construction. The creation of noise in excess of the permitted decibel level in connection with Construction during the following hours:

- (i) 7:00 a.m. to 6: 30 p.m. on Monday, Tuesday, Wednesday, Thursday and Friday.

(c) Loading or Unloading. The creation of noise in excess of the permitted decibel level in connection with the loading, unloading, opening, closing or other handling of boxes, crates, containers, refuse cans or other objects during the following hours:

- (i) 7:00 a.m. to 7:00 p.m. on Monday, Tuesday, Wednesday, Thursday and Friday;
- (ii) 8:00 a.m. to 7:00 p.m. on Saturday, Sunday and Holidays.

(d) Commercial Maintenance Equipment. The commercial operation of maintenance equipment (including but not limited to pressure cleaners, blowers, sweepers or vacuums) in excess of the permitted decibel level during the following hours:

(i) 7:00 a.m. to 6:30 p.m. on Monday, Tuesday, Wednesday, Thursday, and Friday.

(e) Power Tools and Landscaping Equipment. The operation of noise-producing lawn mowers, lawn edgers, weed trimmers, chippers, Leaf Blowers, chain saws, power tools and other noise-producing tools in excess of the permitted decibel level during the following hours:

(i) 8:00 a.m. to 6:30 p.m. on Monday, Tuesday, Wednesday, Thursday and Friday.

(f) Idling of Engines. The idling of any internal combustion engine in excess of the permitted decibel level:

a. If conducted during the following permitted hours:

(i) 7:00 a.m. to 7:00 p.m. on Monday, Tuesday, Wednesday, Thursday and Friday;

(ii) 8:00 a.m. to 7:00 p.m. on Saturday, Sunday and Holidays; or

a. After 7:00 p.m. and until 11 p.m. during the loading and unloading of items from a refrigerated vehicle for a period of less than fifteen (15) minutes; or

b. At anytime outside the permitted hours during the loading and unloading of passengers from a vehicle for a period of less than fifteen (15) minutes.

(g) Testing of Generators. The creation of noise in excess of the permitted decibel level in connection with the routine testing of a generator for a period not to exceed fifteen (15) minutes during the following hours:

(i) 12:00 p.m. to 3:00 p.m., on Monday, Tuesday, Wednesday, Thursday and Friday.

Sec. 17-4. Exemptions.

The terms and prohibitions of this chapter shall not be applied to or enforced against:

(1) Any Motor Vehicle, Motorboat or other Vessel or vehicle of the Village, the County, the State or licensed public utility vehicle within the Village while engaged in necessary public business.

(2) Excavation or repairs of bridges, streets, highways, street lights or utilities, by or on behalf of the Village, the County, or the State, or performance of such work during the night if the public welfare and convenience renders it impossible to perform such work during the day.

(3) The Construction of public improvement projects of the Village, including, but not limited to, beach renourishment projects, but solely to the extent authorized by and subject to the conditions set by resolution of the Village Council, as adopted after a public hearing. Any violation of the conditions of the resolution shall cause a waiver of the exemption and shall constitute a violation of this chapter

(4) The Construction of public school improvements as a project of the School Board of Miami-Dade County, Florida (the ASchool Board®), including, but not limited to, the improvement of existing schools or construction of new schools, but solely to the extent authorized by and subject to the conditions set by resolution of the Village Council, as adopted after a public hearing. Any violation of the conditions of the resolution shall cause a waiver of the exemption and shall constitute a violation of this chapter.

(5) A reasonable use of amplifiers or loudspeakers in the course of public addresses or gatherings which are noncommercial in character.

(6) Holiday celebrations held on July 4 and December 31 to January 1, except that this exemption shall not apply and an authorized Village employee may enforce the provisions of Section 17-7 if the celebration is injurious to human health or welfare. Holiday celebrations held on Holidays other than July 4, and December 31 to January 1, shall also be exempt, but solely to the extent authorized by and subject to the conditions set by resolution of the Village Council, as adopted after a public hearing:

- (a) If conducted for social, noncommercial purposes at private residences or within common areas of multifamily properties;
and/or
- (b) If conducted at restaurants or hotels.

Any violation of the conditions of the resolution shall cause a waiver of the exemption and shall constitute a violation of this chapter.

(7) Noise produced from lawful governmental activities at parcels located in GU or PROS zoning districts.

(8) Any audible warning signals or sounds created, emanated or generated by any vehicle, mechanical or electrical devise, the operation of which is mandated by any federal, state, or local law.

(9) Any noise generated for the purpose of alerting persons to the existence of an Emergency, or any noise generated during or in preparation for an Emergency, to prevent imminent harm to life or property, so long as it is the minimal amount of noise necessary to address the Emergency, and the owner, tenant, or authorized representative of the applicable property provides advance notice to the Village Police Department prior to the commencement of such noise generation.

(10) Any Noise Disturbance or noise exceeding the limitations in Section 17-3 which exists for a period of less than one continuous minute shall not constitute a violation of this chapter unless such noise is purposely interrupted, before again resuming, in an effort to circumvent the prohibitions of this chapter.

(11) Any incidental display of fireworks as part of a permissible activity or event on properties within the Hotel Resort (HR), Planned Unit Development (PUD), or Private Club (PC) zoning districts, so long as the total amount of time of the display does not exceed two (2) minutes.

(12) Any indoor or outdoor activity, event, gathering, party, or other attended entertainment or celebration which will likely create a Noise Disturbance under Section 17-2 or constitute a violation under Section 17-3 may be permitted upon the prior approval of the Village in accordance with the procedures set forth in Section 17-5.

Sec. 17-5. Permits for Special Events.

The following provisions set forth the procedures for obtaining approvals pursuant to subsections 17-4(12), and 30-102(e) of the Village Code.

Upon written application to the Village, submitted a minimum of twenty (20) days prior to the proposed activity or event, the prohibitions or hour restrictions contained herein may be modified subject to such conditions as the Village may impose. Permit applications for activities or events located within the Hotel Resort (HR), Planned Unit Development (PUD), or Private Club (PC) zoning districts which will likely constitute a violation pursuant to Section 17-3 shall be reviewed and may be approved by the Village Council at a public hearing. All other permit applications shall be reviewed and may be approved by the Village Manager. The decision of the Village shall be final and not subject to appeal.

(1) Permit application information. Except as provided herein, the permit applicant shall be the owner or the tenant of the property where the activity or event shall take place. The permit applicant for activities or events held on the public beach shall be the owner or tenant of the adjacent property. Tenant applicants shall submit written consent of the property owner with their application. The application for a permit under this section shall contain the following information:

- (a) The name, date of birth, address, and telephone number of the person who will be in charge of the activity or event for which a permit is requested;
- (b) The name of the person or entity seeking the permit;
- (c) The exact date and time for which the permit is sought;
- (d) The exact location of the activity or event for which a permit is requested; and
- (e) A description of the activity or event for which a permit is requested.

(2) Permit contents, time restrictions. Permits issued under this section shall specify the date and time during which the activity or event authorized by permit may be conducted. No permit shall be issued which encompasses more than one calendar day, or a span of hours in excess of eight hours.

(3) Procedures for administrative permits. The Village Manager is hereby authorized to promulgate reasonable rules and procedures for the application, issuance and revocation of such permits.

(4) Criteria for permit issuance; posting of bond. Issuance of a permit under this section shall be based on a determination by the Village that the activity or event for which a permit is requested does not constitute a threat to public safety or constitute a danger or impediment to the normal flow of traffic. The Village may require that a bond be posted in an amount sufficient to secure full compliance with the terms and conditions of the permit and to secure the costs of cleanup, repair or replacement of damage or destruction of property, in an amount not to exceed \$5,000.00, and shall be subject to forfeiture for purposes of paying any such costs.

(5) Persons 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 activity or event for which the permit is sought must remain at the location of said activity or event during the entire time stated in the permit. 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 activity or event authorized by the permit for the entire time specified in the permit.

(6) Conditions on Special Event Permits. The Village shall impose conditions on the issuance of special event permits necessary or appropriate to protect the life, safety and welfare of the Village residents, including but not limited to, hours of the special event.

(7) Denial. The Village is hereby authorized to deny a special event permit where the applicant has been issued more than two (2) citations or civil violation notices pursuant to Section 17-7 of this chapter during the preceding twelve (12) month period or where more than two (2) citations or civil violation notices were issued for activities located upon applicant=s property during the preceding twelve (12) month period.

(8) Application fees and delinquency penalty. A permit application fee, as established by Resolution of the Village Council, shall be due and payable at the time of the application. Those applications not timely filed shall be considered delinquent and subject to a delinquency penalty as established by Resolution of the Village Council.

Sec. 17-6. Enforcement.

This chapter shall be enforced by the Village Police Department or any other official of the Village authorized to enforce this chapter.

Sec. 17-7. Penalties.

(a) Generally. Any authorized Village employee who finds a violation of this chapter, shall issue a verbal warning to the violator requiring immediate correction of the violation. If the violation is not corrected immediately by the violator after issuance of the verbal warning, or the violation recurs within a 12-month period, the authorized Village employee shall issue a citation or civil violation notice to the violator requiring immediate correction of the violation, and shall impose a fine in the

amount of \$150.00 for which the violator shall be liable. If the violation is not corrected immediately by the violator after issuance of the citation or civil violation notice, or the violation recurs within a 12-month period, the authorized Village employee shall issue a second citation or civil violation notice and shall impose an additional fine in the amount of \$500.00. In the event that the violation continues after issuance of the second citation or civil violation notice to the violator, the violation shall constitute a public nuisance and may subject the violator to arrest by a Village police officer pursuant to State law or additional fines of \$500.00.

(b) Additional notice requirements for violations of Section 17-2(7). For citations or civil violation notices issued under Section 17-2(7), Construction, if the violator is not the property owner or the property owner's authorized representative, a copy of each citation or civil violation notice shall be provided to the property owner or the property owner's authorized representative. If the violation is caused by a subcontractor involved in Construction, a copy of the citation or civil violation notice shall also be provided to the general contractor of the work. Further, the general contractor and subcontractor shall be cited and be responsible for a violation of Section 17-2(7).

(c) Repeat violations. Repeat violations of Section 17-2 or Section 17-3 of this chapter shall be subject to enhanced fines as authorized for repeat violations by F.S. 162.09(2)(a).

(d) Violations of Section 17-2(19). Violations of Section 17-2(19) concerning False Burglar Alarms are subject to the penalties set forth in Section 17-8.

Section 4. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in the Code. That it is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Code of the Village of Key Biscayne; 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.** That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED on first reading this 26th day of April, 2005.

PASSED AND ADOPTED on second reading this 22nd day of November, 2005.

MAYOR ROBERT OLDAKOWSKI

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY