**ORDINANCE NO._____**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE CITY CODE, ENTITLED "ENVIRONMENT," BY AMENDING ARTICLE IV, ENTITLED "NOISE," BY AMENDING SECTION 46-152, ENTITLED "NOISES; UNNECESSARY AND EXCESSIVE PROHIBITED," BY AMENDING THE HOURS PROHIBITING POWER TOOLS AND LANDSCAPING EQUIPMENT FROM BETWEEN 8:00 P.M. AND 7:00 A.M., TO BETWEEN 8:00 P.M. AND 8:00 A.M.; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, noise generated by power tools and landscaping equipment during the early morning hours negatively affects the quality of life of the City's residents and visitors.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:**

**SECTION 1.** That Section 46-152 of Article IV of Chapter 46 of the Code of the City of Miami Beach, Florida, is hereby amended as set forth below; and Sections 46-157 through 46-159 are provided for reference purposes:

**CHAPTER 46**
**ENVIRONMENT**

* * *

**ARTICLE IV. NOISE**

* * *

**Sec. 46-152. Noises; unnecessary and excessive 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:

* * *

(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 between 8:00 p.m. and ~~7:00 a.m.~~ 8:00 a.m.

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**Sec. 46-157. Exemptions.**

The following uses and activities shall not constitute unnecessary and excessive noises prohibited in section 46-152:

* * *

(4) Authorized activities on or in municipal or publicly owned properties and facilities, except where such publicly owned properties or facilities are under private operation or use, unless the city manager or the city manager's designee has specifically authorized an exemption from this section, which exemption will be subject to specific requirements consistent with the administrative guidelines approved by separate resolution of the city commission.

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**Sec. 46-158. Enforcement by code inspectors; notice of violation; warnings; responsibility to provide current address.**

(a) *Notice of violation.* If the code inspector observes a violation of this article, the inspector shall issue a notice of violation to each person and entity identified in section 46-153, and a courtesy copy of the violation shall be provided to an employee or other representative of the business tax receipt holder who is on the premises of the business tax receipt holder, except as otherwise provided in subsection (b). The code inspector shall inform the violators that they must immediately cease the violation. The notice shall include the following information:

(1) Name of the violator.

(2) Date and time of violation.

(3) Nature of the violation.

(4) Amount of fine or other penalty for which the violator may be liable pursuant to section 46-159 of this Code or as otherwise provided by law.

(5) Instructions and due date for paying the fine.

(6) Notice that the violation may be appealed by filing a written request for an administrative hearing with the clerk of the special master within ten days after service of the notice of violation, that failure to do so shall constitute an admission of the violation and waiver of the right to a hearing, and that unpaid fines will result in the imposition of liens which may be foreclosed by the city.

The notice shall also inform the violator that repeat violations of this article will result in the imposition of larger fines and may also result in revocation, suspension, or the imposition of restrictions on the business tax receipt, and/or certificate of use, or accessory use, and/or injunctive proceedings as provided by law. The notice shall be signed by the code inspector who witnessed the violation.

(b) *Warnings.*

(1) *Oral warnings.* If a code inspector observes a violation of this article without a complaint having been made, the inspector may first issue one oral courtesy warning per day and inform the violator that the violator will be subject to penalties if the violation continues.

(2) *Written warnings.* A code inspector shall first issue a written warning to immediately cease the violation prior to issuing a notice of violation unless one written warning has been issued in the 12 months preceding the date of violation.

The written warning shall be substantially in the same form as the notice of violation as stated in subsection 46-158(a) above. Failure to correct the violation within 15 minutes following the issuance of a written or oral warning shall result in the issuance of a notice of violation pursuant to this article.

A code inspector shall not issue a written warning, and instead shall issue a notice of violation, to any person, entity or establishment who:

a. In any one day has already been issued a written warning as specified in section 46-158; or

b. In any 12-month period has exceeded the warning limits specified in subsection 46-158(b)2; or

c. Is also being cited for an illegal commercial or nonpermitted nonresidential use in a residential zoning district.

(c) *Responsibility to provide current address.* The holder of the business tax receipt for the premises where a violation or warning is issued shall have the responsibility to keep the city advised of its current address and of the current address of the owner of the premises.

**Sec. 46-159. Fines and penalties for violation; appeals; alternate means of enforcement.**

(a) The following civil fines and penalties shall be imposed for violations of this article:

(1) If the offense is the first offense, $250.00 fine.

(2) If the offense is the second offense within the preceding 12 months, $1,000.00 fine.

(3) If the offense is the third offense within the preceding 12 months, $2,000.00 fine.

(4) If the offense is the fourth offense within the preceding 12 months, one weekend (noon Friday through noon Monday) business tax receipt conditions and/or accessory use restrictions shall be imposed limiting the ability to produce any live or amplified sound at that portion of the premises that caused the violation, in addition to a $3,000.00 fine.

(5) If the offense is the fifth offense within the preceding 12 months, two weekend (noon Friday through noon Monday) business tax receipt conditions and/or accessory use restrictions shall be imposed limiting the ability to produce any live or amplified sound at that portion of the premises that caused the violation, in addition to a $5,000.00 fine.

(6) If the offense is the sixth or greater offense within the preceding 12 months, it shall be considered an habitual offender offense with penalties and fines imposed pursuant to subsection 46-159(h).

(7) The first time an offense is committed while the violator was also engaged in an illegal commercial or nonpermitted, nonresidential use in a residential zoning district, $1,000.00, notwithstanding the fine provision in subsection (1) above.

(8) The second or any subsequent time an offense is committed while the violator was also engaged in an illegal commercial or nonpermitted, nonresidential use in a residential zoning district, $5,000.00, notwithstanding the fine provisions in subsections (2)-(4) above.

A person may receive a separate notice of violation once every hour if a violation has occurred at any time within that period. Each violation shall constitute a separate offense for which a separate fine shall be imposed. An offense shall be deemed to have occurred on the date the violation occurred. Business tax receipt conditions or accessory use restrictions pursuant to this section shall be imposed by order of the special master after finding an offense warranting suspension or restriction has occurred. An offense occurring 12 months after the last offense shall be treated as a first offense for purposes of incurring new fines and penalties. However, any fines or penalties imposed in any prior 12-month period shall not be waived or altered.

(b) A violator who has been served with a notice of violation shall elect either to:

(1) Pay the civil fine in the manner indicated on the notice; or

(2) File a written request for an administrative hearing before a special master to appeal the decision of the code inspector that resulted in the issuance of the

notice of violation. The written request shall be submitted to the clerical staff of the special master no later than ten (10) days of service of the notice of violation, and shall be accompanied by an appeal fee as approved by a resolution of the city commission. The fee may be returned to the violator if the special master rules in favor of the violator. All disputes regarding proper notice of the violation and timeliness of the appeal shall be heard by the special master prior to any hearing on the merits of the violation itself.

(c) The procedures for appeal of the notice of violation shall be as set forth in sections102-384 and 102-385. A courtesy mail notice shall be promptly provided to the complainant of any hearing regarding the notice of violation, and the complainant may testify at such hearings; provided, however, that nontransmission of the courtesy notice to the complainant shall not in any way invalidate, affect, or impair any of the further proceedings, actions, or determinations in the case. Failure to give such notice shall not be a cause for continuance or cancellation of any scheduled hearing of the matter. Only two continuances, for no longer than 20 days each, shall be granted by the special master for any administrative hearing unless the alleged offender, at a hearing on a motion for continuance, establishes by testimony, and/or other evidence, that good cause exists for a further continuance. If the special master finds that a violation has occurred, the applicable penalty set forth in subsection 46-159(a) shall be imposed.

(d) Failure of the named violator to appeal the decision of the code inspector within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the special master. A waiver of the right to an administrative hearing shall be treated as an admission of the violation and penalties shall be assessed accordingly. In the event of a fourth or fifth offense, and following notification by the code inspector of the violator's failure to timely request an administrative hearing, the special master shall enter an order setting the time during which conditions shall be imposed on the violator's business tax receipt or, as applicable, the accessory uses shall be restricted. Such conditions or restrictions shall begin no later than 30 days after entry of the order by the special master.

(e) Any party aggrieved by the decision of a special master may appeal that decision to a court of competent jurisdiction as provided in F.S. § 162.11 and section 30-77 of this Code.

(f) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil fines. A certified copy of an order imposing a civil fine or city bill for penalties due under this section may be recorded in the public records and thereafter shall constitute a lien upon any other real or personal property owned by the violator and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After two months from the filing of any such lien that remains unpaid, the city may foreclose or otherwise execute on the lien. All costs and attorney's fees incurred by the city for collecting any fine shall be paid by the violator.

(g) As an alternative or additional means of enforcement, the city may institute proceedings to revoke or suspend a business tax receipt and/or certificate of use or seek injunctive relief.

(h) In cases of habitual offender violations or offenses, the city manager may issue an administrative complaint for suspension or revocation of a business tax receipt and certificate of use as provided in section 102-383. Upon a finding of habitual offender violations or offenses by the city manager, a business tax receipt suspension, revocation and/or fine shall be imposed. Suspensions shall be imposed with restrictions limiting the ability to provide any live or amplified sound as either a condition of the business tax receipt or as an accessory use restriction. In the event the violator is a hotel, motel, condominium, apartment or other residential property, accessory use restrictions shall be imposed in lieu of a business tax receipt revocation which results in the eviction of residents. Additionally, in the event of a revocation, as a condition of being permitted to resume operation under the business tax receipt, the city manager shall utilize the criteria set forth in section 142-1362 of this Code to impose such conditions or restrictions as deemed appropriate to assure compliance with all city codes.

In determining the length of the suspension or accessory use restriction to be imposed under this subsection, the city manager shall consider the following factors: the gravity of the violations or offenses; any actions taken by the violator to correct the violations or offenses; and, any previous violations or offenses committed by the violator. No suspension or accessory use restriction imposed under this subsection shall be for a period of time of less than 30 consecutive days.

In the event a habitual offender does not hold a business tax receipt or certificate of use, the special master shall impose a fine up to $5,000.00 per violation.

(i) Any fine imposed under this article shall become a lien pursuant to the procedures of sections 30-74 and 30-75 of this Code.

(j) In addition, in the event a violator refuses to comply with a notice of violation issued under section 46-158, a violator may be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed $500.00 per offense or both.

(k) Nothing herein shall restrict the powers and authority granted to the various boards and committees of the city, including the imposition of conditions and sanctions not specifically enumerated in this article.

(l) Nothing herein shall be deemed to modify existing applicable state, county or city building and fire codes, ordinances, laws or regulations.

(m) A nolle prosequi, or any other decision made by the city not to prosecute a notice of violation, must be based upon good cause and issued in writing in a public record

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**SECTION 2. REPEALER.**

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

**SECTION 3. SEVERABILITY.**

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

**SECTION 4. CODIFICATION.**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

**SECTION 5. EFFECTIVE DATE.**

This Ordinance shall take effect on the _____ day of _____, 2018.

**PASSED AND ADOPTED** this _____ day of _____, 2018.

**ATTEST:**

_____
Dan Gelber, Mayor

_____
Rafael E. Granado, City Clerk

Underline denotes additions
~~Strike through~~ denotes deletions

(Sponsored by Commissioner Michael Gongora)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney Date 3/5/18

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