

**ORDINANCE NO. 2024-0662**

**AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA AMENDING CHAPTER 11 "NUISANCES," ARTICLE II "NOISE" OF THE CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Village Council of Bal Harbour Village ("Village") seeks to amend regulations related to certain noises on in the "B" Business district; and

**WHEREAS**, with the transition of construction activity from the 96<sup>th</sup> Street parking garage to the north, the noise impacts of construction are now much closer to the neighboring single family residential neighborhood to the north for the first time, and the Village has received an increase in noise complaints related to this construction; and

**WHEREAS**, in 2023, the Village amended the noise regulations applicable everywhere other than the B Business District to prohibit construction noise on Saturdays, and the Village desires to bring the noise regulations in the B Business District into alignment with those of the rest of the Village; and

**WHEREAS**, the Village further seeks to more closely align the process for enforcement of noise requirements with that followed in the remainder of the Village; and

**WHEREAS**, based on feedback received, the Village Council further desires to expand the holidays on which construction noise is prohibited throughout the Village to include all federally recognized holidays along with those already listed in the Code; and

**WHEREAS**, the Village finds that these changes will improve the quality of life for its residents and are essential to the public health, safety and welfare; and

**WHEREAS**, this Ordinance was originally adopted on April 9, 2024, with a scheduled implementation date of June 1, 2024; and

**WHEREAS**, the readoption of the Ordinance is in an abundance of caution because of a recently filed lawsuit from the Bal Harbour Shops, challenging the method of adoption as provided in Section 166.041(4), Florida Statutes, in order to moot any arguments over the method of adoption without conceding that there was any deficiency in the first adoption; and

**WHEREAS**, no changes to the April 9 Ordinance are proposed, and the Village will refrain from enforcement of the amendments pursuant to Section 166.0411(1), Florida Statutes, until that portion of the lawsuit is determined by the court; and

**WHEREAS**, the 2017 Development Agreement between the Village and Bal Harbour Shops (the "2017 DA") governs a development project within the B Business District in the Village; and

**WHEREAS**, none of these amendments are in conflict with the laws and policies governing the 2017 DA and none prevent development of the land uses, intensities, or densities in the 2017 DA; and

**WHEREAS**, based on the public hearing previously held on the April 9 Ordinance adopting these amendments, the public health, safety, and welfare of the Village's residents requires that the April 9 amendments to the noise regulations apply to the 2017 DA and to the expansion to the Bal Harbour Shops it governs, as well as to the operation of the existing Shops development.

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That the above stated recitals are hereby adopted and confirmed.

**Section 2. Village Code Amended - Chapter 11.** That Chapter 11 "Nuisances", Article II "Noise" of the Code of Bal Harbour Village, Florida, is hereby amended to read as follows:<sup>1</sup>

**CHAPTER 11 - NUISANCES**

\* \* \*

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<sup>1</sup> Additions to existing Village Code text are shown by underline; deletions from existing Village Code text are shown by ~~strikethrough~~. Any changes between first and second reading are shown by highlighted double underline and ~~double strikethrough~~ font.

## ARTICLE II. - NOISE

### Sec. 11-31. - Certain Noises restricted to specified hours.

(a) *Regulated Noises*. Noises, other than those enumerated in section 11-29 because of their nature and characteristics, shall be grouped as follows for the purpose of control and restriction:

\* \* \*

(b) *Prohibited Times*.

(1) The Noises set forth in subsection (a)(1) of this section are hereby prohibited at any location and at any hour on Saturdays and Sundays and on federally recognized holidays, ~~New Year's Day, Christmas Day, Independence Day, Labor Day, Thanksgiving Day, Memorial Day, Veteran's Day,~~ Good Friday, Yom Kippur, and Rosh Hashanah, and on Mondays through Fridays from 5:30 p.m. to 8:30 a.m., except as provided in subsections (d) and (e) of this section.

(2) The Noises set forth in subsection (a)(2) of this section are hereby prohibited at any location and at any hour on Sundays and on federally recognized holidays, ~~New Year's Day, Christmas Day, Independence Day, Labor Day, Thanksgiving Day, Memorial Day, Veteran's Day,~~ Good Friday, Yom Kippur, and Rosh Hashanah, and on Mondays through Saturdays from 5:30 p.m. to 8:30 a.m., except as provided in subsections (d) and (e) of this section.

\* \* \*

### Sec. 11-32. Construction Noise in the "B" Business District.

(a) *Definitions*. For the purposes of this section, the following terms will have the following prescribed meaning unless the context indicates otherwise:

- (1) *Permit Applicant* means the person who hired or will serve as the contractor or company to perform the construction activities.
- (2) *Noise Receptor Site* means a Lot which is the recipient of Construction Noise emanating from outside of the Lot's property line or, in the event that the Lot is part of an approved site plan, outside of the boundary of the site plan, regardless of whether that Lot is located in the Village.
- (3) *Permitted Decibel Level* means the maximum decibel level permitted for Construction Noise.
- (4) *Violator* means the general contractor, subcontractor, company, or person performing the construction activities in violation of the provisions of this Section.

(b) *Regulations*. Construction Noise in the "B" Business District shall conform to the following regulations:

- (1) *Prohibited Hours of Construction:* Construction Noise is prohibited from ~~6~~4:00 p.m. ~~Friday Saturday~~ through 8:30 a.m. Monday, and all day on federally recognized holidays, New Year's Day, Independence Day, Labor Day, Thanksgiving Day, Memorial Day, Veteran's Day, Good Friday, Yom Kippur, and Rosh Hashanah, and Christmas Day. Construction activities that occur completely within the exterior walls of a Building may occur ~~within the prohibited hours of construction~~ from 6:00 pm. through 9:00 p.m. Monday through Friday, so long as Construction Noise does not exceed 55 decibels when measured from a Noise Receptor Site.
- (2) *Permitted Decibel Levels:* The Permitted Decibel Level of Construction Noise shall not exceed the following limits during the specified times, when measured from a Noise Receptor Site:
  - a. *Night:* 55 decibels for all hours outside of those defined as Day in subsection b. from 6:00 p.m. Monday through Thursday to 8:30 a.m. the following day, and from 6:00 p.m. Friday to 10:00 a.m. Saturday, and
  - b. *Day:* 80 decibels from 8:30 a.m. to 6:00 p.m., Monday through Friday, ~~and from 10:00 a.m. to 4:00 p.m. Saturday.~~
- (3) The regulations of this subsection shall not be interpreted to apply to noise arising from landscaping activities.

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- (e) *Enforcement.* This section shall be enforced by the Village Manager in accordance with the following procedures and standards. The Village finds that Construction Noise violations are irreparable or irreversible in nature as a matter of law, and the penalties for such violations are established as follows in accordance with F.S. § 162.09(2).
  - (1) *Verbal warning.* If the Village Manager finds a violation of this section, he or she shall issue a verbal warning to the Violator, Permit Applicant, and Property Owner requiring immediate correction of the violation.
  - (2) *Civil penalties.*
    - a. *First citation.* If the violation is not corrected immediately after issuance of the verbal warning, the Village Manager shall issue a citation requiring immediate correction of the violation, shall impose fines in the amount of \$500.00 against ~~both~~ the Violator, and Permit Applicant, and ~~shall notify the Property Owner of the violation.~~
    - b. *Second citation.* If the violation is not corrected immediately after issuance of the first citation, or the violation recurs within a 60-day period, the Village Manager shall issue a second citation requiring immediate correction of the violation, shall impose fines in the amount of \$1,000.00 against ~~both~~ the Violator, and Permit Applicant, and ~~shall notify the Property Owner of the violation.~~
    - c. *Third citation.* If the violation is not corrected immediately after issuance of the

- second citation, or the violation recurs within a 60-day period, the Village Manger shall issue a third citation requiring immediate correction of the violation, shall impose fines in the amount of \$2,500.00 against ~~both the Violator, and Permit Applicant, and shall notify the Property Owner of the violation.~~
- d. *Continuing or recurring violations.* In the event that the violation continues after or recurs within 60 days of issuance of the third citation, the Village Manager ~~shall revoke the ability of both the Violator and Permit Applicant to make any Construction Noise between 6:00 p.m. Monday through Thursday to 8:30 a.m. the following day, and from 6:00 p.m. Friday to 10:00 a.m. Saturday for seven consecutive days, and may impose an additional penalty of \$5,000.00 against both the Violator, and Permit Applicant, and Property Owner. The Village Manager may revoke the ability of both the Violator and Permit Applicant to make any Construction Noise between 6:00 p.m. Monday through Thursday to 8:30 a.m. the following day, and from 6:00 p.m. Friday to 10:00 a.m. Saturday for periods of time in excess of seven consecutive days, in the event that the Violator or Permit Applicant has more than three violations in a six-month period of time and the Violator or Permit Applicant has failed to address and resolve the violations. In such event, the Village Manager may also impose a penalty of \$5,000.00 against the Property Owner if the Property Owner is not the Permit Applicant.~~
- e. *Future violations.* If no other violation occurs for ~~six~~ twelve consecutive months after a violation is complied, the enforcement procedures of this subsection shall reset as to all parties and any future violations will again result first in a verbal warning, followed by the escalating progression of citations and penalties as set forth in subsections a–e.
- (3) *Criminal penalties.* In addition to or in lieu of the civil penalties set forth above, with respect to any of the provisions of this section, the Violator may be arrested and punished by imprisonment in the county jail for a period not to exceed 60 days.

\* \* \*

**Section 3. 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 be 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 4. Inclusion in the Code.** That it is the intention of the Village Council,

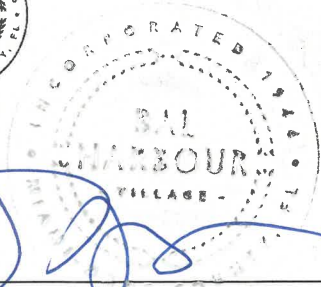
and it is hereby ordained that this Ordinance shall become and be made a part of the Bal Harbour Village Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

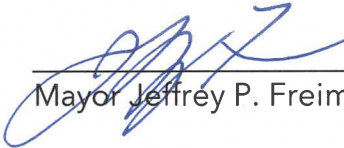
**Section 5. Conflict.** That all Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions, or parts of resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

**Section 6. Effective Date.** That this Ordinance shall be effective upon adoption on second reading.

PASSED AND ADOPTED on first reading this 18<sup>th</sup> day of June, 2024.

PASSED AND ADOPTED on second reading this 16<sup>th</sup> day of July, 2024.



  
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Mayor Jeffrey P. Freimark

ATTEST:  
  
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Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
Village Attorney  
Weiss Serota Helfman Cole & Bierman, P.L.