

#4

JUL 28 2011



MEMORANDUM Council Memo No. TDE12-001

DATE: JULY 28, 2011

TO: MAYOR AND COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RD*
 PAT MCDERMOTT, ASSISTANT CITY MANAGER *PM*
 R.J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR *RJZ*

FROM: DAVE NAKAGAWARA, BUILDING OFFICIAL *DN*

SUBJECT: ORDINANCE NO. 4317 AMENDING THE CHANDLER CITY CODE BY AMENDING CHAPTER 11, SUBSECTION 11-10 TO REVISE THE CITY CODE LANGUAGE IN ORDER TO CLARIFY THE INTENT OF THE ORIGINAL ORDINANCE.

RECOMMENDATION: Staff recommends introduction and tentative approval of Ordinance No. 4317 amending the Chandler City Code by amending Chapter 11, Subsection 11-10 to revise the City Code language in order to clarify the intent of the original ordinance.

BACKGROUND/DISCUSSION: The Chandler City Council passed Ordinance No. 4153 on January 14, 2010. Ordinance No. 4153 established time limits for construction activity near residential areas. Staff is recommending revisions to the City Code language to clarify the intent of the original ordinance. A strict reading of the existing City Code language would exclude concrete work from the exception that would allow construction work to occur outside the established time limits if located more than 500 feet from any residential property. The language (Ordinance No. 4317) being submitted for your approval would clearly define concrete work (including the mixing and pouring of concrete and the idling or backing-up of concrete trucks) as construction work and would allow concrete work to be afforded the same exception as other construction work. In addition, the proposed language would clearly allow for work in the right-of-way or on public property to be conducted after-hours on weekends or holidays under a valid encroachment permit, which was the intent of the original ordinance.

The existing code language addressing construction noise has been in place for over one year, and it appears that the 500 foot clearance from residential property provides a

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reasonable buffer from construction noise. The proposed code language simply affords concrete work the same exclusion as other construction work based upon distance from residential properties. Also, the proposed language clarifies the intent of the original ordinance to allow after-hours work in the right-of-way or on public property to be conducted on weekends or holidays, under a valid encroachment permit issued by the City Engineer.

FINANCIAL IMPLICATIONS:

Cost:	N/A
Savings:	N/A
Long Term Costs:	N/A

PROPOSED MOTION: Move that Council introduce and tentatively approve Ordinance No. 4317 amending the Chandler City Code by amending Chapter 11, Subsection 11-10 to revise the City Code language in order to clarify the intent of the original ordinance.

Attachment: Ordinance No. 4153, Ordinance No. 4317

ORDINANCE NO. 4317

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
CHANDLER, ARIZONA, AMENDING THE CHANDLER CITY
CODE BY AMENDING CHAPTER 11, SUBSECTION 11-10

BE IT ORDAINED by the City Council of the City of Chandler, Arizona as follows:

SECTION 1: AMENDMENT OF CHANDLER CITY CODE:

11-10.2 Construction Noise.

A. It shall be unlawful for any person to ~~pour concrete or~~ perform any construction work in the city, except within the time periods specified herein. As used in this section, "construction work" shall include (1) operating construction-related equipment; (2) performing outside construction work; (3) performing outside repair work on buildings, structures or projects; and, (4) operating a pile driver, power shovel, pneumatic hammer, derrick, power hoist or other construction-type device; (5) idling or operation of concrete mixing trucks; and (6) pouring concrete.

~~B. Concrete may not be poured and concrete mixing trucks may not be idled between the hours of 10:00 p.m. and 5:00 a.m. each day.~~

B. Construction work occurring within five hundred (500) feet of a residential property may not begin prior to 5:00 a.m. and may not continue beyond 10:00 p.m. on weekdays. Notwithstanding the foregoing, construction work occurring within five hundred (500) of a residential property shall not begin prior to 7:00 a.m. and must stop by 7:00 p.m. on any Saturday, Sunday or holiday. For the purposes of this section, a "residential property" is defined as a lot, parcel or tract of land containing one (1) or more dwelling units, and distance is measured from lot lines with any intervening public right-of-way being included in the measurement.

~~C.D.~~ Notwithstanding the foregoing, ~~pouring concrete or performing of~~ construction work in a public place or right-of-way located within five hundred (500) feet of a residential property may begin prior to 5:00 a.m. and may continue beyond 10:00 p.m. on weekdays and prior to 7:00 a.m. and beyond 7:00 p.m. on any Saturday, Sunday or holiday, provided that an encroachment permit allowing such an extended time period is obtained. Said encroachment permit shall be kept on the work site and shown to city officials on request. For the purposes of this section, a "public place" is defined as any real property owned, maintained or controlled by the City.

D.E. Nothing herein shall be construed to prohibit emergency construction work that is necessary to provide essential services such as water, sewer, electricity, data/communications, or gas to any property or to remedy an immediate threat to the public safety or the safety of the inhabitants of any given property.

E.F. The Public Works Director or designee may revoke any encroachment permit granted hereunder upon complaint based upon substantial evidence that the construction activity caused unreasonable disturbance in the vicinity of the work site. To deny or revoke a permit, the Public Works Director or designee shall deliver or mail by certified mail to the business address shown on the permit application, a written notice that said permit is revoked and which lists the grounds therefore, and which may order the immediate stoppage of the work being performed under the permit pending any hearing on the revocation. A revoked permit shall be surrendered to the Public Works Director or designee on demand.

1. The permittee may request an informal hearing on such revocation by submitting a written request within ten (10) days after the notice of revocation is given and shall set forth specifically the grounds for the

hearing. If a hearing is not requested within ten (10) days of the date of notice, the revocation shall take effect on the eleventh day after the date of the notice. If a hearing is requested, no revocation shall take effect until after the hearing and date of notice of the Public Works Director or designee's final decision. An appeal of the Public Works Director's decision to the City Manager, may not be made prior to the date of notice of Public Works Director's final decision.

2. The permittee may appeal the final decision of the Public Works Director/designee within ten (10) days of the date of notice of such decision by submitting to the City Clerk a written notice of the permittee's intention to appeal to the City Manager/designee. A timely appeal shall result in a stay of any decision of the Director/designee, except that a work stoppage order may remain in effect. The appeal will be heard in accordance with the provisions set forth in Chapter 1. Failure to appeal in writing within the prescribed time constitutes a waiver of the right to appeal. The decision of the City Manager/designee shall be final.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this ___ day of _____, 2011.

ATTEST:

CITY CLERK

MAYOR

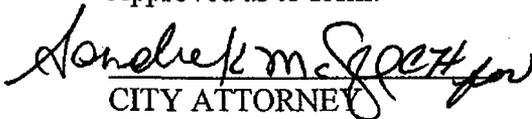
PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this ___ day of _____, 2011.

ATTEST:

CITY CLERK

MAYOR

Approved as to form:


CITY ATTORNEY

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. ___ duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the ___ day of _____, 2011, and that a quorum was present thereat.

CITY CLERK

Published:

ORDINANCE NO. 4153

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AMENDING THE CHANDLER CITY CODE BY REPEALING CHAPTER 30, SECTION 30-11; BY RENUMBERING CHAPTER 30, SECTION 30-12 AS SECTION 30-11; AND BY ADOPTING A NEW CHAPTER 11, SUBSECTION 11-10, DISTURBING THE PEACE PROHIBITED; AND PROVIDING PENALTIES FOR THE VIOLATION OF THIS ORDINANCE.

BE IT ORDAINED by the City Council of the City of Chandler, Arizona, as follows:

SECTION 1. AMENDMENT OF CHANDLER CITY CODE.

The Chandler City Code is amended as follows: (a) Section 30-11 of Chapter 30 is hereby repealed; (b) Section 30-12 of Chapter 30 is hereby renumbered as Section 30-11 of Chapter 30; and (c) a new Subsection 11-10 of Chapter 11 is hereby adopted to read as follows:

11-10. Disturbing the peace prohibited.

No person shall disturb the peace, quiet and comfort of any neighborhood by creating therein any disturbing or unreasonably loud noise.

11-10.1 Disturbing noises designated.

- A. It is the intent of this chapter to prohibit all noises that are disturbing or unreasonably loud. The types of noises set out in subsection B. shall not be deemed or construed as in any way exclusive, but merely illustrative.
- B. The following types of noises are declared to be disturbing to the peace, quiet and comfort of the neighborhood in which they are heard, and persons creating such noises are in violation of section 11-10:
 1. Operating any vehicle at such a speed on a curve or turn, or accelerating or decelerating such vehicle in such a manner as to create loud and unnecessary noise through the squealing of tires upon the pavement, or to cause damage to the roadway;
 2. The sounding of any horn, signal or noise device on any automobile, motorcycle, bus, truck or other vehicle, in any other manner or for any other purpose than allowed by the Arizona Vehicle Code or other laws of the State;
 3. The noise from an exhaust system of any vehicle that is not equipped or constructed so as to prevent any disturbing or unreasonably loud noise;
 4. The revving of the engine of any motor vehicle while such vehicle is not in motion, except when done in the course of repairing, adjusting or testing it during reasonable hours;
 5. Keeping, harboring or having custody within the City any dog which barks, howls or makes noises by day or night which disturbs the peace and quiet of any person or family in the neighborhood;

6. For any person who sells food and drink, at or adjacent to any conveyance, to ring bells, play chimes or an amplified musical system or to make other noise in any residential area of the City for advertising purposes between the hours of 8:00 p.m. and 9:00 a.m. and between the hours of 1:00 p.m. and 3:00 p.m., and no such noise shall be made when the vehicle is parked;
 - a. For the purposes of this section, an "amplified musical system" is defined as mechanical or electrical musical instrument, or music producing device, equipped with an electrical amplifier or loudspeaker.
 - b. No bells, chimes, or amplified musical system, as defined herein shall make noise or music which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing or working in the area.
 7. Disturbing or unreasonably loud shouting or crying of peddlers, hawkers, vendors or newspaper carriers;
 8. The playing or operating of any radio, phonograph, orchestra or other musical device or instrument in a manner that is disturbing or unreasonably loud to a reasonable person outside the facility or unit from which the noise emanates; and
 9. Disturbing or unreasonably loud shouting, screaming, wailing or other vocalization that is disturbing or unreasonably loud to a reasonable person outside the facility or unit from which the noise emanates.
- C. Nothing herein shall be construed so as to prohibit noises produced by emergency vehicles, operations or procedures of any kind or at any time, or to prohibit noise produced in the normal conduct of business or commerce, provided that such noise production occurs within the normal and customary hours for the conduct of such business or commerce and the operation is being legally conducted within the scope of all ordinances, laws and statutes of the City of Chandler, Maricopa County and the State of Arizona.

11-10.2 Construction Noise

- A. It shall be unlawful for any person to pour concrete or perform construction work in the city, except within the time periods specified herein. As used in this section, "construction work" shall include (1) operating construction-related equipment; (2) performing outside construction work; (3) performing outside repair work on buildings, structures or projects; and, (4) operating a pile driver, power shovel, pneumatic hammer, derrick, power hoist or other construction-type device.
- B. Concrete may not be poured and concrete-mixing trucks may not be idled between the hours of 10:00 PM and 5:00 AM each day.
- C. Construction work occurring within 500 feet of a residential property may not begin prior to 5:00 AM and may not continue beyond 10:00 PM on weekdays. Notwithstanding the

foregoing, construction work shall not begin prior to 7:00 AM and must stop by 7:00 PM on any Saturday, Sunday or holiday. For the purposes of this section, a “residential property” is defined as a lot, parcel or tract of land containing one or more dwelling units, and distance is measured from lot lines with any intervening public right-of-way being included in the measurement.

- D. Notwithstanding the foregoing, pouring concrete or performing construction work in a public place or right-of-way located within 500 feet of a residential property may begin prior to 5:00 AM and may continue beyond 10:00 PM provided that an encroachment permit allowing such an extended time period is obtained. Said encroachment permit shall be kept on the work site and shown to city officials on request. For the purposes of this section, a “public place” is defined as any real property owned, maintained or controlled by the City.
- E. Nothing herein shall be construed to prohibit emergency construction work that is necessary to provide essential services such as water, sewer, electricity, data/communications, or gas to any property or to remedy an immediate threat to the public safety or the safety of the inhabitants of any given property.
- F. The Public Works Director or designee may revoke any encroachment permit granted hereunder upon complaint based upon substantial evidence that the construction activity caused unreasonable disturbance in the vicinity of the work site. To deny or revoke a permit, the Public Works Director or designee shall deliver or mail by certified mail to the business address shown on the permit application, a written notice that said permit is revoked and which lists the grounds therefore, and which may order the immediate stoppage of the work being performed under the permit pending any hearing on the revocation. A revoked permit shall be surrendered to the Public Works Director or designee on demand.
1. The permittee may request an informal hearing on such revocation by submitting a written request within ten (10) days after the notice of revocation is given and shall set forth specifically the grounds for the hearing. If a hearing is not requested within ten (10) days of the date of notice, the revocation shall take effect on the eleventh day after the date of the notice. If a hearing is requested, no revocation shall take effect until after the hearing and date of notice of the Public Works Director or designee's final decision. An appeal of the Public Works Director's decision to the City Manager, may not be made prior to the date of notice of Public Works Director's final decision.
 2. The permittee may appeal the final decision of the Public Works Director/designee within ten (10) days of the date of notice of such decision by submitting to the City Clerk a written notice of the permittee's intention to appeal to the City Manager/designee. A timely appeal shall result in a stay of any decision of the Director/designee, except that a work stoppage order may remain in effect. The appeal will be heard in accordance with the provisions set forth in Chapter 1. Failure to appeal in writing within the prescribed time constitutes a waiver of the right to appeal. The decision of the City Manager/designee shall be final.

11-10.3. Disruptive parties.

- A. Prohibition of parties that disturb the peace. No person shall knowingly congregate

because of, or participate in, any party or gathering of two (2) or more people from which noise emanates of sufficient volume or of such nature to reasonably disturb the peace, quiet, or repose of other persons.

- B. Authority to disperse noisy party. A Police Officer may order all persons present other than the owners or tenants of the building or place to immediately disperse. It shall be unlawful for any person to refuse to leave after being ordered to do so by a Police Officer.
- C. Owner or other tenant responsibility in abatement of disturbance. It shall be unlawful for any owner or tenant of the building or place who has knowledge of the disturbance to fail or refuse to immediately abate said disturbance.

11-10.4 Penalties for disturbing the peace.

Any person who violates a provision of Section 11-10, including any subsection thereof, shall be guilty of a misdemeanor and shall be subject to the penalties provided in Chapter 1 of this Code.

SECTION 2: EFFECT OF REPEAL OF CHAPTER 30, SECTION 30-11.

The repeal by this Ordinance No. 4153 of existing Chapter 30, Section 30-11, Disturbing the Peace Prohibited, shall not affect any punishment, penalty or civil infraction incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under said existing Chapter 30, Section 30-11.

SECTION 3: PENALTY CLAUSE.

A person who violates a provision of new Section 11-10 of Chapter 11 of the Chandler City Code as enacted by this Ordinance No. 4153 is guilty of a Class 1 misdemeanor, which is punishable by a fine not exceeding \$2,500.00, by imprisonment for a term not exceeding 6 months, by probation for a term not exceeding 3 years, or by any combination thereof. The sentence to pay a fine that is imposed on an enterprise convicted of a Class 1 misdemeanor shall be an amount not more than \$20,000.00

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this 14th day of January 2010.

ATTEST:


CITY CLERK


MAYOR

