

REGULAR

NUMBER: 196.10

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 213 OF TITLE V OF THE MILPITAS MUNICIPAL CODE RELATING TO NOISE ABATEMENT

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of March 17, 2009, upon motion by Councilmember Gomez and was adopted (second reading) by the City Council at its meeting of _____, upon motion by Councilmember _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the City of Milpitas (“City”) has the power to regulate excessive sound and vibration within the City of Milpitas in order to safeguard the public health, safety, and welfare; and

WHEREAS, by way of City of Milpitas Ordinance No. 196.9, adopted on May 20, 2008, the City authorized a six-month trial of solid waste, recyclables and/or yard trimming collection times in residential areas within the City beginning as early as 6:00 a.m. during the fall and winter months; and

WHEREAS, the City Council has received reports on the conduct of this early morning, trial collection effort and finds that an early morning collection would not injure or be detrimental to the public health, safety and welfare; and

WHEREAS, accordingly, the City Council wishes to make changes to the noise abatement provisions of the Milpitas Municipal Code to permit solid waste, recyclables and/or yard trimming collection by authorized collectors and haulers, subject to the remaining provisions of state and local law.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE V-213-3(a) 3.03.

Section V-213-3 (a) 3.03 of the Milpitas Municipal Code is hereby amended and restated in its entirety to read as follows:

3.03 The above prohibition against making, continuing or causing to be made or continued any disturbing noise in any district zoned for residential use shall not apply to the authorized collection of solid waste, recyclables, and/or yard trimmings by an authorized collector beginning at 6:00 a.m.

SECTION 3. REPEAL OF MILPITAS ORDINANCE NO. 196.9 AND DELETION OF MILPITAS MUNICIPAL CODE V-213-3(a) 3.04.

Ordinance 196.9, adopted on May 20, 2008, which provided for a temporary six-month test service period for the collection of solid waste, recyclables, and/or yard trimmings, is hereby repealed. Furthermore, Section V-213-3(a) 3.04 of the Milpitas Municipal Code is hereby deleted in its entirety.

SECTION 4. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 5. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.