

AN ORDINANCE OF THE CITY OF WILDWOOD, MISSOURI, AMENDING SECTION 217.050 OF THE CODE OF ORDINANCES OF THE CITY OF WILDWOOD BY DELETING IT IN ITS ENTIRETY AND ENACTING, IN LIEU THEREOF, A NEW SECTION 217.050; AMENDING SECTIONS 217.020, 415.030, 415.090 AND 415.110; ADDING A NEW SECTION 415.600; DESIGNATING AQUACULTURE AS A CONDITIONAL USE WITHIN ANY RESIDENTIAL ZONING DISTRICT; ENACTING NEW PARAMETERS FOR THE TREATMENT OF LEGAL, NON-CONFORMING USES OF THIS SAME NATURE; AND IMPLEMENTING NEW REGULATIONS WITHIN THE NOISE CONTROL CODE THAT DESCRIBE AND MANAGE EMITTERS OF SOUND THAT PRODUCE SUCH ON A CONTINUOUS BASIS FOR EXTENDED PERIODS OF TIME. (Wards – All)

WHEREAS, over the course of the last five (5) years, the matter of emitters of continuous sound over extended periods of time has been the subject of much discussion due to concerns about the inadequacy of current regulations to minimize the impact of such emitters in rural areas of the City, where a quiet environment is valued; and

WHEREAS, particular attention has been paid to aquacultural operations which are emitters of continuous sound due to the need to aerate the water environment where the fish pens are located for maturing; and

WHEREAS, the sound generated by aquacultural operations typically does not exceed the noise restrictions in the City's Noise Control Code; and

WHEREAS, the sound generated by aquacultural operations is nearly constant, and the continuous nature of such sound may negatively impact surrounding properties and uses; and

WHEREAS, due to the continuous sound generated by aquacultural operations, restricting their location and regulating such use is appropriate, particularly where aquacultural operations are operated on or near residential property, in order to minimize the negative effects of such uses; and

WHEREAS, a public hearing was held before the Planning and Zoning Commission in August, 2015, where the Commission and City personnel heard comments from the public and an operator of an existing aquaculture operation about the impacts and benefits of any new regulations in this regard; and

WHEREAS, after this public hearing, the Department of Planning recommended an approach to minimize the effect of uses in the rural areas of Wildwood that have sound characteristics that create a nuisance, at the least, or a public health issue, at the greatest; and

WHEREAS, this approach was to modify the current regulations and requirements of the City's Noise Control Code to address not only the decibel level associated with noise, but also its pitch and frequency, which, however, was determined not to be the best approach by the Planning and Zoning Commission, given its concerns about the technical nature of these two (2) components of sound and enforcement considerations; and

WHEREAS, thereafter, the Department of Planning, in conjunction with the City Attorney, developed regulations and requirements to address continuous emitters of sound, regardless of location, and defined how future aquaculture operations would be treated by the City; and

WHEREAS, the Planning and Zoning Commission, at its March 20, 2017, meeting, voted to support the amendments to the recommended codes of the City to address this matter and provide greater levels of review in association with any new aquaculture operations that might be proposed in Wildwood at some point in the future; and

WHEREAS, the City Council conducted a public hearing on this matter at its April 10, 2017, meeting and agreed to authorize the preparation of legislation to proceed with these recommended additions and changes to the Code of Ordinances; and

WHEREAS, this action adhered to the established processes that are consistent with both State and local requirements for notification, posting, and review, and supports the public's general health, safety, and welfare.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILDWOOD, MISSOURI, AS FOLLOWS:

Section One. That Section 217.020 of the Code of Ordinances of the City of Wildwood, be and is hereby amended by enacting the following definitions, to read as follows:

SECTION 217.020 - DEFINITIONS

AGRICULTURAL OPERATION: Any farm used in the production or processing for commercial or similar purposes of agricultural products.

AGRICULTURAL PRODUCTS: Products which are propagated, grown and/or harvested in the City, including, *but not limited to*, crops, bees, honey, fish or other aquacultural product, livestock, a livestock product, a forestry product, and poultry or a poultry product, either in its natural or processed state.

AQUACULTURE: The controlled propagation, growth and harvest of fish, shellfish or other aquatic organisms for commercial purposes.

CONTINUOUS SOUND: A sound emitted by one or more pieces of machinery or equipment for more than sixty (60) consecutive minutes, unless such machinery or equipment is used during planting or harvesting crops.

FARM: A parcel of land used for growing or raising agricultural products, including related structures thereon.

Section Two. That Section 217.050 of the Code of Ordinances of the City of Wildwood be and is hereby amended by deleting it in its entirety and enacting, in lieu thereof, a new Section 217.050, to read as follows:

SECTION 217.050 PERMISSIBLE NOISE LEVELS—STANDARDS.

A. No person shall make, cause to be made, continue, operate or permit to be operated any stationary noise source which emits noise in such a manner that the level of the noise emitted, when measured at any point outside the boundary of the property upon which the stationary noise source is located using the slow meter characteristic and the A-weighting network of the sound level meter, exceeds the levels set forth in Table I below or exceeds the limit set forth in Section 217.050(F). A noise measured or registered in the manner provided herein from any source at a level which is in excess of the dB(A) established for the time period and land uses listed in this Section is hereby declared to be excessive, unusually loud and a nuisance under the City of Wildwood Municipal Code Chapter 215 Nuisances and is unlawful. When the noise emitted is measured upon property which is located in a different land use category than the property upon which the stationary noise source is located, the levels applicable to the property where the noise emitted is measured shall be used to determine if a violation exists. If more than one (1) use exists on the property where the noise emitted is measured such that more than one (1) land use category would be applicable to the property, then the levels set forth in the least restrictive applicable land use category of Table I shall be used to determine if a violation exists.

B. No person shall operate or cause to be operated any motor vehicle or motorcycle off a public right-of-way in such a manner that the sound level emitted exceeds the limits set forth in Table I, except in areas otherwise designated for such activity. Notwithstanding the standard sixty (60) minute period of measurement, incidents of this described nature will be considered under a period of measurement of no fewer than fifteen (15) minutes or no greater than thirty (30) minutes for the purposes of establishing whether the activity exceeds the limits set forth in Table I, but shall be determined based upon the most restrictive sound threshold for that particular use category (residential, commercial and/or industrial). The operation of any motor vehicles or motorcycles of this nature, which exceeds the limits set forth in Table I, shall be required to obtain a conditional use permit from the City of Wildwood in accordance with Section 415.500 Conditional Use Permits for continued operation.

C. If the stationary noise source emits noise containing a discrete tone, the permissible levels shall be 5dB lower than the applicable levels of Table I.

D. If the stationary noise source emits impulsive noise, the levels of Table I shall be lowered by 5dB. A violation of this code shall exist if the level of the impulsive noise emitted exceeds the applicable levels of Table I, as modified by this Subsection, when the measurement is made using the fast meter characteristic and the A-weighting network of the sound level meter or if the level of the impulsive noise emitted exceeds the limit set forth in Section 217.050(F).

E. In the event the stationary noise source emits impulsive noise containing a discrete tone, the modifications of Table I set forth in Subsections (B) and (C) herein shall be cumulative.

F. If the ambient noise level exceeds the level of the noise emitted from the stationary noise source for one (1) or more periods of time during the period of measurement, then for any such period of

time the level of the noise emitted from the stationary noise source shall be deemed to be lower than the level which is permitted for sixty (60) minutes during the period of measurement in the applicable land use category and for the applicable time of day.

G. If, during the period of measurement, noise shall be emitted from a stationary noise source for periods of time at two (2) or more different levels, a violation of this code shall exist if the sum of the following fractions $C_1/T_1 + C_2/T_2 + \dots C_n/T_n$ exceeds the unit number 1. For purposes of this calculation, C_n shall equal the actual time period that noise is emitted at each measured noise level and T_n shall equal the period of time that noise is permitted under Table I to be emitted at each measured noise level. Provided, however, if:

1. The ambient noise level exceeds the level of noise emitted from the stationary noise source for one (1) or more periods of time during the period of measurement; or

TABLE I
A. Residential Land Use Category
Daytime Hours

Tn*	(dB(A))**
60	55 or less
30	56—58
15	59—61
8	62—64
4	65—67
2	68—70
0	71 or greater

2. The level of the noise emitted from the stationary noise source is lower than the level of noise which is permitted in Table I for sixty (60) minutes during the period of measurement in the applicable land use category and for the applicable time of day for one (1) or more periods of time during the period of measurement, then for the purpose of the calculation set forth in this Subsection, for each such period of time, the term C_n shall be deemed to be zero (0) and the fraction C_n/T_n shall be zero (0).

Nighttime Hours

Tn*	(dB(A))**
60	50 or less
30	51—53
15	54—56
8	57—59
4	60—62
2	63—65
0	66 or greater

*Total Duration of Time Noise to be Emitted From Noise Source During Period of Measurement (Minutes).

**A-Weighted Sound Pressure Level.

B. Commercial Land Use Category

Daytime Hours

Tn*	(dB(A)**
60	65 or less
30	66—68
15	69—71
8	72—74
4	75—77
2	78—80
0	81 or greater

Nighttime Hours

Tn*	(dB(A)**
60	60 or less
30	61—63
15	64—66
8	67—69
4	70—72
2	73—75
0	76 or greater

*Total Duration of Time Noise to be Emitted From Noise Source During Period of Measurement (Minutes).

**A-Weighted Sound Pressure Level

C. Light Industrial Land Use Category

All Hours

Tn*	(dB(A)**
60	70 or less
30	71—73
15	74—76
8	77—79
4	80—82
2	83—85
0	86 or greater

*Total Duration of Time Noise to be Emitted From Noise Source During Period of Measurement (Minutes).

**A-Weighted Sound Pressure Level.

D. Heavy Industrial Land Use Category

All Hours

Tn*	
60	80 or less
30	81—83
15	84—86
8	87—89
4	90—92
2	93—95
0	96 or greater

*Total Duration of Time Noise to be Emitted From Noise Source During Period of Measurement (Minutes).

**A-Weighted Sound Pressure Level.

H. No machinery or equipment used as part of an agricultural operation shall emit a continuous sound that results in an increase in the noise level above the ambient noise level at all boundary lines of the lot on which the machinery or equipment is located.

I. For the purposes of this Section, a noise not in violation of the parameters specified above constitutes a noise disturbance in violation of this Section when, in the reasonable discretion of St. Louis County Police Officers, public health officials or Code Enforcement Officers, the noise constitutes an unreasonable interference with enjoyment of life, quiet, comfort or outdoor recreation of an individual or individuals of ordinary sensitivity or habits who are present at the time the noise is made.

Section Three. That Section 415.030 of the Code of Ordinances of the City of Wildwood, be and is hereby amended by enacting the following definitions, to read as follows:

ZONING ORDINANCE - SECTION 415.030 DEFINITIONS

AGRICULTURAL OPERATION: Any farm used in the production or processing for commercial or similar purposes of agricultural products.

AGRICULTURAL PRODUCTS: Products which are propagated, grown and/or harvested in the City, including, *but not limited to*, crops, bees, honey, fish or other aquacultural product, livestock, a livestock product, a forestry product, and poultry or a poultry product, either in its natural or processed state.

AQUACULTURE: The controlled propagation, growth and harvest of fish, shellfish or other aquatic organisms for commercial purposes.

CONTINUOUS SOUND: A sound, as defined in Section 217.020 of the City Code of the City of Wildwood, emitted by one or more pieces of machinery or equipment for more than sixty (60) consecutive minutes, unless such machinery or equipment is used during planting or harvesting crops.

Section Four. That Section 415.090.C of the Code of Ordinances of the City of Wildwood, be and is hereby amended by enacting a new Subparagraph 8, to read as follows:

SECTION 415.090 "NU" NON-URBAN RESIDENCE DISTRICT REGULATIONS.

C. Conditional Land Use And Development Permits Issued By The Commission. The following land uses and developments may be permitted under conditions and requirements specified in Section 415.500 "Conditional Use Permits", except the specified home occupations described below which must adhere to simplified process defined in Subsections (H) and (I) of this Section.

8. Aquaculture.

Section Five. That Section 415.110.C of the Code of Ordinances of the City of Wildwood, be and is hereby amended by enacting a new Subparagraph 8, to read as follows:

SECTION 415.110 R-1 ONE ACRE RESIDENCE DISTRICT REGULATIONS.

C. Conditional Land Use And Development Permits Issued By The Commission. The following land uses and developments may be permitted under conditions and requirements specified in Section 415.500 "Conditional Use Permits", except the specified home occupations described below which must adhere to simplified process defined in Subsections (H) and (I) of this Section:

8. Aquaculture.

Section Six. That Chapter 415 of the Code of Ordinances of the City of Wildwood, be and is hereby amended by enacting a new Section 415.600, to read as follows:

SECTION 415.600 SUPPLEMENTARY REGULATIONS FOR AGRICULTURAL AND AQUACULTURAL OPERATIONS.

A. The owner and operator of any machinery or equipment used as part of an agricultural operation and which emits a continuous sound shall ensure that the operation of the machinery or equipment does not result in an increase in the noise level above the ambient noise level, as defined in Section 217.020 of the City Code of the City of Wildwood, at or beyond all boundary lines of the lot on which the machinery or equipment is located. The owner and operator shall construct and install such machinery, equipment or structures necessary to comply with this Section, including but not limited to a cover, enclosure, muffler, berm, landscaping, fencing, or some combination thereof. Prior to operating any machinery or equipment used as part of an agricultural operation and which emits a continuous sound, the owner and operator must submit a sound study to the City outlining which measures will be taken to ensure compliance with this Section.

B. On any lot, which is used for aquaculture on the effective date of this Section, the following are prohibited without obtaining a conditional use permit from the City:

1. Any other use of any kind on the lot, including accessory uses;
2. Expansion of the area used for aquaculture;
3. Installation, construction, reconstruction, or replacement of any structures used for aquaculture; or
4. An increase in the number of aquatic organisms held, grown or harvested on the lot.

Undertaking any of the activities in this Subsection B without first obtaining a Conditional Use Permit will result in the forfeiture of any non-conforming use for aquaculture.

C. No Conditional Use Permit for any of the activities in Subsection B shall be approved by the City, if aquaculture is not a permitted or conditional use in the underlying zoning district in which such lot is located.

Section Seven. Effective Date. This Ordinance shall be in full force and take effect from and after the date of its final passage and approval.

Section Eight. Savings. Except as expressly set forth herein, nothing contained in this Ordinance shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in manner connected with the subject matter hereof.

Section Nine. Severability. If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the City Council that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision, which had been held invalid, is no longer valid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

This Bill was passed and approved this ____ day of _____, 2017 by the Council of the City of Wildwood, Missouri, after having been read by title, or in full, two (2) times prior to its passage.

Presiding Officer

The Honorable James R. Bowlin, Mayor

ATTEST:

Amanda Foster, City Clerk

Amanda Foster, City Clerk