

CITY OF MIDWAY, FLORIDA

ORDINANCE NO. 2020-02

AN ORDINANCE OF THE CITY COUNCIL OF MIDWAY, FLORIDA; RELATING TO PUBLIC COMMENT SESSIONS AT MEETINGS OF THE CITY COUNCIL AND APPOINTED COMMISSIONS; PROVIDING CERTAIN DEFINITIONS AND LEGISLATIVE FINDINGS; AUTHORIZING THE APPROVAL OF A TIME FOR CITIZENS TO SPEAK FREELY ON ISSUES THAT ARE NOT SCHEDULED FOR A MEETING'S AGENDA; PROVIDING FOR EXCEPTIONS; PROVIDING THE RESPONSIBILITIES OF THE CITY COUNCIL, COMMISSIONS, AND PUBLIC COMMENT PARTICIPANTS; PROHIBITING THE USE OF OBSCENE SPEECH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, Florida Statutes Section 286.0114, makes provision for public comment during public meetings for the City of Midway; and

**WHEREAS**, the City Council of the City of Midway, Florida has, determined that it is in the best interest of the citizens of the City of Midway to be given a reasonable opportunity to be heard on a proposition before a board or commission; and

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF MIDWAY, FLORIDA:**

**ARTICLE 1**

**INTRODUCTION**

**SECTION 1 LEGISLATIVE FINDINGS.** It is hereby ascertained determined, and declared that:

(A) Pursuant to Article VIII, section 2 of the Florida Constitution and section 286.0114, Florida Statutes, the City of Midway, Florida shall have the governmental, corporate, and

proprietary powers to enable it to conduct municipal government, perform municipal functions and make provisions for public comments during public meetings for the City of Midway; except when expressly prohibited and/or preempted by law.

(B) Pursuant to Section 286.0114, Florida Statutes, the city council and commissions of the City of Midway, Florida shall give a reasonable opportunity to the public to be heard on a proposition before the city council or a commission.

(C) Pursuant to Section 286.0114, Florida Statutes, the city council and commissions of the City of Midway, Florida have the responsibility to maintain orderly conduct or proper decorum in a public meeting. Maintaining orderly conduct or proper decorum in a public meeting provides a public purpose and promotes the goals of the Florida Sunshine Laws by striving for increased transparency and openness, and also by protecting the First Amendment rights of the citizens of Midway, Florida.

(D) It is the intent of the City Council to maintain orderly conduct or proper decorum in public meetings and give a reasonable opportunity to the public to be heard on a proposition before the city council or a commission; and to promote the goals of the Florida Sunshine Laws, and to protect the First Amendment rights of the citizens of Midway, Florida.

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**SECTION 2 DEFINITIONS.** As used in this Ordinance, the following words and terms shall have the following meanings, unless the context clearly otherwise requires.

“Public Comment” means any public comment before action on an agenda item; any public comment at the conclusion of the meeting; and any written public comments regarding the meeting.

“Public Comment Period” is a “limited public forum” for purposes of the (US) First Amendment’s rules on freedom of speech, and the broad language of Fla. Stat. §286.0114 to hold “public comment periods”

“Obscene Speech” means any use of language that involves sexual, vulgar, or profane elements and/or fall within the class of obscene speech.

“Public Comment Participant” means and includes any person sand, wood, stone, brick, cement, concrete, roofing and other refuse building materials usually left over from a construction or remodeling project, and also, trees, tree trunks, and tree stumps.

**SECTION 3 INTERPRETATION.** Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “shall” or “will” are mandatory; the term “may” is discretionary; the terms “hereof,” “herein,” “hereto,” “hereunder,” and similar terms refer to this Ordinance; and the term “hereafter” means after, and the term “heretofore” means before, the effective date of this Ordinance. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

## **ARTICLE II**

### **REQUIREMENTS**

**SECTION 1 TIME REQUIREMENTS.** The City Council and appointed commission of the City of Midway, Florida, shall give members of the public a reasonable opportunity to be heard on a proposition before a board or commission and are required to designate public comment periods on all agendas. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decision making process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. (This section does

not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting.)

The opportunity to provide comment shall be subject to the following:

(A) Members of the public will be given an opportunity to provide comment on subject matters before the City Council and appointed commissions after an agenda item is introduced at a properly noticed meeting.

(B) Members of the public shall be limited to five (3) minutes to provide comment. This time shall not include time spent by the presenter responding to questions posed by Board members, staff or Board counsel. The chair of the Board may extend the time to provide comment if time permits.

(C) Members of the public shall notify the City Council or appointed commissions in writing of their interest to be heard on a proposition or matter before said council or commissions. To make a public comment, participants must fill out a Request to Speak Form at the meeting and give it to the bailiff, chairperson, and/or parliamentarian. The notification shall identify the person or entity, purpose, and identify who will speak on behalf of a group or faction of persons consisting of two (2) or more persons.

**SECTION 2 EXCEPTIONS.** The requirements in Section 1 do not apply to:

(A) An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the City Council or appointed commissions to act;

(B) An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;

(C) A meeting that is exempt from s. 286.011; or

(D) A meeting during which the City Council or appointed commissions are acting in a quasi-judicial capacity. This paragraph does not affect the right of a person to be heard as otherwise provided by law.

**SECTION 3 RESPONSIBILITIES OF CITY COUNCIL, COMMISSIONS, AND PUBLIC COMMENT PARTICIPANTS.** The City Council or appointed commissions must allow general comments about any topic related to the City of Midway. Public Comment Participants in required public comment periods are generally free to comment on any subject that is within the jurisdiction and/or topics of the City Council or appointed commission that is holding the comment period. The City Council or appointed commission shall not restrict comments about such topics based on the viewpoint stated by the speaker, or by the forcefulness of the speaker's arguments.

**SECTION 4 OBSCENE SPEECH PROHIBITIONS.** The City Council or appointed commission shall restrict comments about such topics that involve sexual, vulgar, or profane elements or fall within the category of obscene speech cases. The City Council or appointed commission may prohibit obscenity without reference to the First Amendment. Material that may be classified as obscene may include:

- (A) Commentary that appeals to an indecent interest based on community standards;
- (B) Commentary that depicts sexual content defined by state law in a "patently offensive" manner; and
- (C) Commentary that lacks serious literary, artistic, political, or scientific value.
- (D) Commentary that includes incitement, threats, fighting words, and child pornography.

### ARTICLE III

**SEVERABILITY; SUPPLEMENTAL AUTHORITY; EFFECTIVE DATE**

**SECTION 1 SEVERABILITY.** The provisions of this Ordinance are severable; and if any section, subsection, sentence, clause or provision is held invalid by any court of competent jurisdiction, the remaining provisions of this Ordinance shall not be affected thereby.

**SECTION 2 SUPPLEMENTAL AUTHORITY.** Except as expressly provided for elsewhere in this Ordinance, this Ordinance shall not be construed as repealing or superseding any City of Midway Ordinances and consistent provisions therein, or Florida Statutes or Laws, and shall be construed as providing alternative or supplemental authority for the exercise of all powers granted and provided for herein. This Ordinance shall be read in concert with the Florida Statutes as it may be amended or renumbered from time to time.

**EFFECTIVE DATE.** A certified copy of this Ordinance shall be filed with the Department of State within ten (10) days after enactment by the City Council and the Ordinance shall take effect as provided by law

PASSED AND DULY ADOPTED ON THIS 5<sup>th</sup> DAY OF March, 2020.

CITY COUNCIL OF THE CITY OF  
MIDWAY, FLORIDA

By:   
Ronald Colston, Mayor

**CERTIFICATION**

The undersigned, Clerk of the City of MIDWAY, FLORIDA, do hereby certify that the above and foregoing ORDINANCE OF THE CITY COUNCIL OF MIDWAY, FLORIDA; RELATING TO PUBLIC COMMENT SESSIONS AT MEETINGS OF THE CITY COUNCIL AND APPOINTED COMMISSIONS; PROVIDING CERTAIN DEFINITIONS AND LEGISLATIVE FINDINGS; AUTHORIZING THE APPROVAL OF A TIME FOR CITIZENS TO SPEAK FREELY ON ISSUES THAT ARE NOT SCHEDULED FOR A MEETING'S AGENDA; PROVIDING FOR EXCEPTIONS; PROVIDING THE RESPONSIBILITIES OF THE CITY COUNCIL, COMMISSIONS, AND PUBLIC COMMENT PARTICIPANTS; PROHIBITING THE USE OF OBSCENE SPEECH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE, was duly enacted on the date set forth above at a regular meeting of the City Council of the City of MIDWA, FLORIDA.

(SEAL)

By:   
Frances Harrell, City Clerk