

ORDINANCE NO. 2020-~~01~~

AN ORDINANCE OF THE CITY COUNCIL OF MIDWAY, FLORIDA; RELATING TO THE PROVISION OF NOISE CONTROL; PROVIDING CERTAIN DEFINITIONS AND LEGISLATIVE FINDINGS; AUTHORIZING THE APPROVAL OF NOISE PERMITS WITH PROPERTY OWNERS AND LESSEES; PROVIDING FOR GENERAL PROHIBITIONS; PROVIDING PROHIBITED NOISES; PROVIDING CERTAIN EXEMPTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Midway, Florida desires to protect, preserve and promote the public health, safety, welfare, and convenience of its citizens by adopting an Ordinance to reduce, control, and prevent unreasonable noise; and

WHEREAS, the City Council has determined that as the City of Midway expands to meet increasing population demands, the City of Midway must meet the challenge of effectively reducing harmful noise pollution that affects the interests of the citizens of Midway including the interests of commercial developers, business owners, and neighborhood residents.

WHEREAS, the State of Florida has empowered the City of Midway to adopt such an Ordinance.

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

ARTICLE I

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 166.021, 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 render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited and/or preempted by law.

(B) The regulation of noise pollution within the City provides a public purpose and promotes the health, safety, and welfare of the citizens of Midway, Florida.

(C) There has been and continues to be an inordinate amount of complaints with regard to noise disturbances in various areas of Midway, Florida, necessitating regulation of noise pollution within Midway, Florida.

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

“Boundary line” means either (a) the imaginary line including its vertical extension that separates one parcel of property from another; (b) the vertical and horizontal boundaries of a dwelling unit that is part of a multi-dwelling unit building; or (c) on a multi-use property, the interface between the two portions of the property on which different categories of activity are being performed

“Community Event” means an event that has free admission and at which everyone is welcome.

“Emergency” means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage.

“Emergency Work” means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

“Plainly Audible” means any sound that can be detected by a person using only his or her usual hearing faculties unaided by any uncommon amplification devices.

“Property Boundary Line” refers to the property line of the property from which the sound emanates.

“Vehicle” means any vehicle which is self-propelled and any vehicle which is propelled by electric power, but not operated upon rails.

“Vehicle Device” means any device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

“Unreasonable Noise” means any excessive or unusually loud sound which either disturbs, injures or endangers the peace or health of a person within the City of Midway, or endangers the health, safety or welfare of the community. Elements to be considered in determining whether noise is excessive in a given situation include, but are not limited to, the following: intensity of the noise, whether the noise is usual or unusual, whether the origin of the noise is natural or unnatural, the intensity of the ambient noise, the proximity of the noise to private residences, the time of the day or night the noise occurs, the duration of the noise, whether the noise is continuous or intermittent, and whether alternate methods are available to achieve the objectives of the sound producing activity.

SECTION 2 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

PROHIBITIONS

SECTION 1 GENERAL PROHIBITIONS. No person or persons shall make, cause to be made, or assist in making any excessive or unreasonably loud noise or disturbance, that disturbs, injures or endangers the peace or health of others within the immediate vicinity of the noise or disturbance. Without limitations, the commission of one (1) or more of the following acts shall be deemed a violation of this Ordinance and shall be considered as a noise disturbance and public nuisance, provided that the sound is plainly audible at or beyond fifty (50) feet from a property's boundary line within the city limits

SECTION 1 NOISES PROHIBITED. The following acts are declared to be per se violations of this article. This enumeration does not constitute an exclusive list:

(A) **Unreasonable Noises:** The unreasonable making of, or knowingly and unreasonably permitting to be made, any unreasonably loud, boisterous or unusual noise, disturbance, commotion or vibration in any boarding facility, dwelling, place of business or other structure, or upon any public street, park or other place or building. The ordinary and usual sounds, noises, commotion, or vibration incidental to the operation of these places when conducted in accordance with the usual standards of practice and in a manner which will not unreasonably disturb the peace and comfort of adjacent residences or which will not detrimentally affect the operators of adjacent places of business are exempted from this provision.

(B) Vehicle horn, signaling devices, and similar devices: The sounding of any horn, signaling device, or other similar device, on any automobile, motorcycle, or other vehicle on any right-of-way or in any public space of Midway, Florida for more than ten (10) consecutive seconds. The sounding of any horn, signaling device, or other similar device, as a danger warning is exempt from this prohibition.

(C) Nonemergency signaling devices: Sounding or permitting sounding of any amplified signal from any bell, chime, siren, whistle, or similar device, intended primarily for non-emergency purposes, from any place for more than ten (10) consecutive seconds in any hourly period. The reasonable sounding of such devices by houses of religious worship, ice cream trucks, seasonal contribution solicitors, or by law enforcement for traffic control purposes are exempt from the operation of this provision.

(D) Emergency signaling devices: The intentional sounding or permitting the sounding outdoors of any emergency signaling device including fire, burglar, civil defense alarm, siren, whistle, or similar emergency signaling device, except in any emergency or except as provided below:

1. Testing an emergency signaling device shall occur between 7:00 a.m. and 8:00 p.m. Any testing shall use only the minimum cycle test time. In no case shall such test time exceed five (5) minutes. Testing of the emergency signaling system shall not occur once each calendar month.

2. Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm, shall terminate within fifteen (15) minutes of activation unless an emergency exists. If a false or accidental activation of an alarm occurs more

than twice a calendar month, the owner or person responsible for the alarm shall be in violation of this article.

(E) Radios, televisions, boom boxes, phonographs, stereos, musical instruments and similar devices: The use or operation of a radio, television, boom box, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of neighbors and passers-by, or is plainly audible at a distance of fifty (50) feet from any person in a commercial, industrial area, or public space. The use or operation of a radio, television, boom box, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and unreasonably disturbs the peace, quiet, and comfort of neighbors in residential or noise sensitive areas, including multi-family or single family dwellings.

(F) Loudspeakers, amplifiers, public address systems, and similar devices: The unreasonably loud and raucous use or operation of a loudspeaker, amplifier, public address system, or other device for producing or reproducing sound between the hours of 10:00 p.m. and 7:00 a.m. on weekdays, and 10:00 p.m. and 10:00 a.m. on weekends and holidays in the following areas:

1. Within or adjacent to residential or noise-sensitive areas; and
2. Within public space if the sound is plainly audible across the real property line of the public space from which the sound emanates, and is unreasonably loud and raucous.

This shall not apply to any public performance, gathering, or parade for which a permit has been obtained from the City of Midway.

(G) Yelling, shouting, and similar activities: Yelling, shouting, hooting, whistling, or singing in residential or noise sensitive areas or in public places, between the hours of 10:00 p.m. and 7:00 a.m., or at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable persons of ordinary sensitivities.

(H) Animals and birds: Unreasonably loud and raucous noise emitted by an animal or bird for which a person is responsible. A person is responsible for an animal if the person owns, controls, or otherwise cares for the animal or bird. Sounds made by animals or birds in animal shelters, kennels, veterinary hospitals, pet shops, or pet kennels licensed under and in compliance with any applicable licensing and permitting provisions are exempt from the subsection.

(I) Loading or unloading merchandise, materials, equipment: The creation of unreasonably loud, raucous, and excessive noise in connection with the loading or unloading of any vehicle at a place of business or residence.

(J) Construction or repair of residential buildings, excavation of streets and highways: The construction, demolition, alteration or repair of any building or the excavation of streets and highways other than between the hours of 7:00 a.m. and 8:00 p.m. on weekdays and Saturdays. This prohibition does not apply to the delivery and installation of concrete and other materials associated with residential slab installation. In cases of emergency, construction or repair noises are exempt from this provision.

(K) Noise sensitive areas – schools, churches, healthcare facilities, and similar institutions: The creation of any unreasonably loud and raucous noise adjacent to any noise sensitive area

while it is in use, which unreasonably interferes with the workings of the institution or which disturbs the persons in these institutions; provided that conspicuous signs delineating the boundaries of the noise sensitive area are displayed in the streets surrounding the noise sensitive area.

(L) **Blowers and similar devices:** In residential or noise sensitive areas, between the hours of 8:00 p.m. and 7:00 a.m., the operation of any noise-creating blower, power fan, or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, provided that the noise is unreasonably loud and raucous and can be heard across the property line of the property from which it emanates.

(M) **Commercial establishments adjacent to residential property:** Unreasonably loud and raucous noise from the premises of any commercial establishment, including any outdoor area which is part of or under the control of the establishment, between the hours of 10:00 p.m. and 7:00 a.m., which is plainly audible at a distance of five feet from any residential property.

ARTICLE III

EXEMPTIONS AND PERMITS

SECTION 1 EXEMPTIONS. Sounds from the following sources shall be exempt from the prohibitions specified in this Ordinance:

(A) Any person or organization that has obtained a noise permit from the City of Midway. Requests for noise permits shall be granted as provided in Section 2.

(B) Any vehicle and equipment owned by and operated by any governmental unit or a utility in the performance of its duties.

(C) Repairs of utility structures which pose a clear and immediate danger to life, health, or significant loss of property.

(D) Repairs or excavations of bridges, streets or highways by or on behalf of any local government, the state, or the federal government, between the hours of 8:00 p.m. and 7:00 a.m., when public welfare and convenience renders it impractical to perform the work between 7:00 a.m. and 8:00 p.m.

(E) Safety signals and warning devices or any other device used to alert persons to any emergency or used during the conduct of emergency work, such as police, fire and rescue vehicle sirens.

(F) Noise associated with a bona fide response to an emergency situation that poses a threat to a person's health, safety or welfare.

(G) Community events between the hours of 7am & 10:00 p.m.

(H) Vehicles or aircraft that meet state and federal standards operating on the public right-of-way or air space and operated in a manner consistent with state and federal law.

(I) Noise associated with standard agricultural operations.

(J) Sound created by bells, carillons, chimes or services held at established religious sites.

(K) The use of firearms when used for hunting in accordance with state Fish and Wildlife laws or when used for sport shooting consistent with any permitting conditions placed on such use.

SECTION 2 NOISE PERMITS. The following shall be deemed necessary for obtaining a noise permit:

(A) Any property owner may apply to the City of Midway's permitting office for a noise permit prior to doing acts prohibited by this Ordinance.

(B) The applicant shall apply for a noise permit in writing with the City of Midway's permitting office at least thirty (30) days prior to the Planning and Zoning Commission meeting at which they wish their request to be considered.

(C) The applicant shall provide a list of property owners or lessees within two hundred fifty (250) feet of the site(s) where the activity is to occur. The administrative agent of the Permitting Office shall send notice to these property owners and/or lessees and to the applicant indicating the time and place that the meeting shall be held in which the request for a permit shall be considered.

(D) In the written application, the applicant shall provide information as to the date and time for which the permit is needed, the length of time the permit is needed, the reason for which the permit is required, any noise control measures that the applicant will take, a map of site including layout of property, placement of noise & activity sources, proximity to neighbors' homes, any information which demonstrates that the ordinance criteria would constitute an unreasonable hardship, and any other information that would assist the Planning and Zoning Commission in making a recommendation to the City Council. The application fee shall be Fifteen Dollars (\$15.00).

(E) For good cause shown, the City Council may grant a noise permit. The Planning and Zoning Commission as well as the City Council shall consider the reason for the event, the day

of week of event, the length of event, the time of event, noise control measures to be taken, location of noise and activities, noise levels, and the impact on neighbors in evaluating the request for a noise permit. By recommendation from the Planning and Zoning Commission, the City Council may impose reasonable conditions to the permit.

ARTICLE IV

CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE

SECTION 1 CONFLICTS: All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, except to the extent of any conflicts with a City of Midway comprehensive plan, and its amendments, which shall prevail over any part of this ordinance which is inconsistent, either in whole or in part, with the said comprehensive plan.

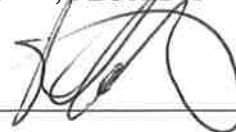
SECTION 2 SEVERABILITY: If any word, phrase, clause, section or portion of this ordinance shall be held invalid or unconstitutional by a court of competent jurisdiction, such portion or words shall be deemed a separate and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 3 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 24th DAY OF June, 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 AN ORDINANCE OF THE CITY COUNCIL OF MIDWAY, FLORIDA; DECLARING LOCAL STATE OF EMERGENCY. 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