

**CITY OF MIDWAY**  
**ORDINANCE NO. 2013-\_\_\_\_\_**

**TITLE:** AN ORDINANCE RELATING TO PROHIBITING AND CONTROLLING NOISE DISTURBANCE.

WHEREAS, the Midway City Council desires to enact an ordinance to prohibit and control excessive noise that adversely affects the community in general and individual citizens in particular;

WHEREAS, the Midway City Council wishes to prohibit noise and disturbance that may specifically result in hearing loss, speech interference, annoyance, and which constitutes a menace to the public health, welfare, peaceful living and quality of life;

WHEREAS, the Midway City Council desires to enact an ordinance that protects, preserves and promotes the health, safety, welfare, peace and quiet for its citizens and to reduce, control and prevent excessive noise otherwise detrimental to individuals in the community and to the enjoyment of life, property and the conduct of business;

NOW, THEREFORE, be it ordained by the Midway City Council that it adopts the following noise ordinance as follows:

**97.01 Declaration of Findings and Policy.**

a. The City of Midway, Kentucky finds that excessive noise adversely affects the community in general and individuals in particular, and may specifically result in hearing loss, speech interference, both indoors and outdoors, and annoyance and a menace to the public health, welfare, peace and the quality of life of its citizens.

b. It is the purpose of this ordinance to protect, preserve and promote the health, safety, welfare, peace and quiet for the citizens of the City of Midway by reducing, controlling and preventing excessive noise. It is further the intent of this ordinance to establish standards that will eliminate and reduce unnecessary and excessive noise, that is physically harmful and otherwise detrimental to individuals in their enjoyment of life, property, quality of life and the conduct of business.

**97.02 Definitions.** As used in this ordinance, the following definitions shall apply:

“Commercial power equipment” shall mean any equipment or device rated at greater than five (5) horsepower in use for home or building repairs or ground maintenance.

“Construction equipment” shall mean any equipment or devices such as, but not limited to, pile drivers, power shovels, jackhammers, derricks, hoist tractors, loaders, rollers, concrete hauling motor vehicles, pavement breakers, backhoes, clamshells, bulldozers, crawler-tractors, rotary drills and augers, cranes, ditchers, trenchers, scrapers, graders, wagons, pumps, compressors and pneumatic power equipment, or other mechanical apparatus operated by fuel or

electric power in the construction, repair or demolition of any building, structure, land, street, driveway or appurtenance thereto.

“Construction” shall mean any site preparation, assembly, erection, substantial repair, alteration or similar action, but excluding demolition for or on public or private right-of-ways, structures, utilities or appurtenances thereto.

“Demolition” shall mean any dismantling or intentional destruction or removal of structures, utilities, public or private right-of-ways, surfaces or appurtenances thereto.

“Domestic power equipment” shall mean any equipment or device rated at five (5) horsepower or less and used for home or building repairs or grounds maintenance.

“Motor vehicle” shall mean any vehicle driven or powered by any means other than muscular power, ~~including those as defined in \_\_\_\_\_~~, including low powered vehicles, road rollers, road graders, farm tractors, motorcycles and vehicles upon which shovels and implements are or can be mounted.

“Noise disturbance” shall mean any sound that endangers or injures the safety or health of humans or animals; noise that disturbs a reasonable person of normal sensibilities or their peace and quality of life; or, endangers or injures personal or real property.

“Person” shall mean any person, firm, group, association, organization, partnership, business, trust, corporation, company, contractor, supplier, installer, user or owner. For purposes of this ordinance, the president, manager, host, or other person in charge of a group, association or organization and their activities within the city limits of the city of Midway, Kentucky shall be responsible for requiring said group, association or organization to comply with this ordinance and shall likewise be subject to the penalties imposed for violation of this ordinance by said group, association or organization.

“Plainly audible” shall mean any human voice, music, or other sound produced by equipment, vehicles, or sound amplification systems upon or from within the source causing such sound, which clearly can be heard at a distance of fifty (50) feet or more.

“Public right-of-way” shall mean any street, avenue, boulevard, alley, highway, sidewalk or similar place that is owned or controlled by a governmental entity.

“Sound” shall mean oscillation and pressure, stress, particle displacement and particle velocity that induces auditory sensation.

“Sound amplification system” shall mean any radio, tape player, compact disc player, MP3, iPod, loud speaker or other electronic or battery powered device or new generation technology used for the amplification of voice, music or any other sound.

### **97.03 Unlawful Conduct.**

a. It shall be unlawful for any person to make, cause to be made, continue or to permit any excessive or unreasonably loud noise or any other raucous sound, considering the

time, date, place and nature of such noise or sound, that annoys, disturbs, injures or endangers the comfort, health, peace, safety or repose of other persons of ordinary sensibilities within the city limits. Factors for determining whether a sound is unreasonably loud and raucous include, but are not limited to the proximity of the sound to sleeping facilities, the land use, nature and zoning of the area from which the sound emanates and the area where it is received, the time of day or night the sound occurs, the duration of the sound and whether the sound is recurrent, intermittent or constant.

b. No person operating, occupying or in control of a motor vehicle on a street, highway, alley, parking lot, park or driveway shall operate or permit the operation of any sound amplification system upon or from within the vehicle of which they occupy or area in possession so that the sound is plainly audible at a distance of fifty (50) or more feet from the vehicle. Measurement standards shall be by human auditory senses based upon direct line of sight. Words or phrases need not be discernible and bass reverberations are included. These requirements apply to any vehicle whether stopped, standing, parked or moving.

#### **97.04 Exemptions.**

The prohibitions set forth herein shall not apply and it shall be a defense to any prosecution hereunder if an otherwise unlawful noise was emitted from:

a. Any siren, whistle, horn or bell lawfully used by emergency vehicles or any other alarm systems used in case of fire, collision, civil defense, police activity or imminent danger; provided, however, that burglar alarms not terminating within thirty (30) minutes after being activated shall be deemed a nuisance and unlawful.

b. Any commercial power and construction equipment operated in the ordinary course of business between the hours of 7:30 a.m. and 6:30 p.m., Monday through Friday, and 7:30 a.m. and 5:30 p.m. on Saturdays.

c. Any domestic power equipment used or operated upon any residential premise between the hours of 7:30 a.m. and 10:00 p.m.

d. The operation and maintenance of airplanes, aircraft, locomotives, trains and railways, brush chippers, vacuum leaf loaders, street sweepers, tractor mowers, drill rigs, sanitation removal and refuse collection vehicles or any other City, county or similar service vehicle or equipment.

e. Organized school or recreational related programs, activities, events, festivals, parades or other public programs, activities or events properly authorized by the City.

#### **97.05 Special Variance**

a. The City or his/her designated representative shall have the authority, consistent with this Subchapter, to grant special variances.

b. Any person seeking a special variance pursuant to this Section shall file an application with the Mayor or his/her designated representative, no less than thirty (30) calendar

days prior to the date on which the special variance is sought to be effective. The application shall contain information which demonstrates that bringing the source of sound or activity for which the special variance is sought into compliance with this Subchapter would constitute an unreasonable hardship on the applicant, on the community, or on other persons. Notice of an application for a special variance shall be given by the Mayor or his/her representative to all persons who own and/or occupy the real property adjoining the site for which the special variance is sought. Notice shall be forwarded by regular mail not less than fifteen (15) calendar days prior to the date on which the special variance is sought to be effective. The failure of the Mayor or his/her representative to notify any adjoining property owner/occupant shall not be fatal to the applicant's request for a special variance. Any individual who claims to be adversely affected by allowance of the special variance may file a statement with the Mayor or his/her representative containing any information to support his claim. Said statement shall be filed not less than seven (7) calendar days prior to the date on which the special variance is sought to be effective.

c. In determining whether to grant or deny the application, the Mayor or his/her designated representative shall balance the hardship to the applicant, the community, and other persons of not granting the special variance against the adverse impact on the health, safety and welfare of persons affected, the adverse impact on property affected and any other adverse impact of granting the special variance. Applicants for special variances and persons contesting special variances may be required to submit any information the Mayor or his/her representative may require. In granting or denying an application, the Mayor or his/her representative shall place on public file a copy of the decision and the reasons for denying or granting this special variance.

d. Special variances shall be granted by notice to the applicant containing all necessary conditions including a time limit on the permitted activity. The special variance shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any conditions of the special variances shall terminate it and subject the person holding it to those provisions of this Subchapter regulating the source of sound or activity for which the special variance was granted.

e. Application for extension of time limits specified in special variance or for modification of other substantial conditions shall be treated like applications for initial special variances.

f. The Mayor or his/her designated representative may issue guidelines defining the procedures to be followed in applying for a special variance and the criteria to be considered in deciding whether to grant a special variance.

#### **97.06 PENALTIES.**

Any person who violates any provision of this Chapter shall be guilty of a violation and upon conviction shall be punished by a fine not to exceed Two Hundred Fifty (\$250.00) dollars. Each day of such violation shall constitute a separate offense and no additional notice other than notice of the original offense shall be required to convict a person for violations resulting from a continuation of such offense.

INTRODUCED and given first reading at a meeting of the Midway City Council on the \_\_\_\_ day of \_\_\_\_\_ 2013, and fully adopted after a second reading at a meeting of said Council held on the \_\_\_\_ day of \_\_\_\_\_ 2013.

This ordinance shall become effective upon passage and publication.

CITY OF MIDWAY, KENTUCKY

\_\_\_\_\_  
Tom Bozarth, Mayor

ATTEST:

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Phyllis Hudson, City Clerk/Treasurer

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