

ORDINANCE NO. ORD-2019-06

AN ORDINANCE RELATING TO SOUND GENERATION; REPEALING SECTIONS 14-2 AND 14-3 OF THE CODE OF ORDINANCES OF THE CITY OF MULBERRY, FLORIDA; DELETING SECTIONS 14-2 AND 14-3 AND RENUMBERING SECTION 14-4 OF THE CODE OF ORDINANCES OF THE CITY OF MULBERRY, FLORIDA; CREATING ARTICLE VII OF CHAPTER 14 OF THE CODE OF ORDINANCES OF THE CITY OF MULBERRY, FLORIDA TO BE ENTITLED "NOISE AND SOUND CONTROLS"; CREATING SECTIONS 14-150 THROUGH 14-163 OF THE CODE OF ORDINANCES OF THE CITY OF MULBERRY, FLORIDA; PROVIDING FOR A COMMON TITLE; ADOPTING FINDINGS OF FACT; PROVIDING FOR AUTHORITY, SCOPE AND DEFINITIONS; PROHIBITING GENERAL NOISE DISTURBANCES; PROVIDING FOR GENERAL ORDINANCE ENFORCEMENT; PROHIBITING SPECIFIC NOISES; CREATING A RULE OF GENERAL CONSTRUCTION; PROVIDING FOR EXEMPTIONS, SEPARATE VIOLATIONS AND IMPLEMENTATION BY RESOLUTION OF THE CITY COMMISSION; PROHIBITING UNREASONABLY EXCESSIVE NOISE IN MOTOR VEHICLES; PROVIDING RULES FOR OUTDOOR CONCERTS; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, AND THE ADMINISTRATIVE CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Mulberry is a Florida municipal corporation endowed with home rule "governmental, corporate and proprietary powers" sufficient to enable it "to conduct municipal government, perform municipal functions and render municipal services" by § 2(b), Article VIII of the Florida Constitution of 1968 and the *Municipal Home Rule Powers Act of 1973*; and

WHEREAS, the City Commission of the City of Mulberry finds that unnecessary, excessive and annoying sound generation by persons within the City's corporate limits is a condition which presently exists and has existed for some time; and

WHEREAS, the City Commission further finds that the amount and intensity of such sound is increasing and is a detriment to the public health, safety, welfare and quality of life of the residents of the City; and

WHEREAS, § 14-3 of the *Code of Ordinances of the City of Mulberry* of 1966, as adopted October 4, 1966 by Ordinance 5.66, purports to regulate sound generation conduct by persons and machinery; and

WHEREAS, with the passage of time and subsequent development of the law the City Commission finds it necessary to enact a new ordinance regulating the generation of unnecessary, excessive and annoying sound or "noise" within the City's corporate limits; it being declared, as a matter of legislative determination and public policy, to be in the public interest for

the City to enact the provisions and prohibitions hereinafter contained in pursuance of and for the purpose of securing and promoting the public health, safety, welfare and quality of life of the City and its residents; and

WHEREAS, in 2014, the Polk County Board of County Commissioners adopted a noise ordinance regulating sound generation in the unincorporated area of Polk County, Florida; and

WHEREAS, by interlocal agreement, the Sheriff of Polk County, Florida patrols and polices the City of Mulberry at a municipal level of law enforcement; and

WHEREAS, in the opinion of the City Commission, adopting the noise regulations of the Board of County Commissioners in the unincorporated area as the law of the City creates a enforcement synergies such that Deputy Sheriffs operating in the municipality enforce the similar or same standard as enforced in the unincorporated area; **NOW, THEREFORE:**

Be it enacted by the city commission of the City of Mulberry, Florida:

Section 1. Amendments to the Code of Ordinances.

The *Code of Ordinances of the City of Mulberry, Florida* is amended to (a) delete Sections 14-2 and 14-3, and renumber Section 14-4 accordingly and (b) create Article VII of Chapter 14 as provided for in Exhibit 'A' to this Ordinance, consisting of ten (10) pages numbered A-1 through A-10, a copy of which is attached hereto and incorporated herein.

Section 2. Conflicts.

All ordinances or parts of ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

Section 3. Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held illegal, invalid or unconstitutional by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The City Commission of the City of Mulberry hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared illegal, invalid or unconstitutional.

Section 4. Codification; Administrative Correction of Scrivener's Errors.

It is the intent of the City Commission that the provisions of Exhibit 'A' to this Ordinance shall be codified and become and be made a part of the *Code of Ordinances of the City of Mulberry*. The provisions of Exhibit 'A' to this Ordinance may be renumbered or relettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word. The implementing sections of this

Ordinance, Sections 1, 2, 3, 4 and 5 shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance. Regardless of whether such inclusion in such codes is accomplished, sections of this ordinance may be renumbered or relettered and the correction of typographical or scrivener's errors which do not affect the intent may be authorized by the City Manager or his or her designee, without need of public hearing, by filing a corrected or recodified copy of same with the City Clerk.

Section 5. Effective Date.

This Ordinance shall become effective immediately upon its passage and adoption

INTRODUCED on First Reading this 6th day of August, 2019.

PASSED AND ENACTED on Second Reading, with a quorum present and voting, by the City Commission of the City of Mulberry, Florida this 20th day of Aug, 2019.

CITY OF MULBERRY, FLORIDA



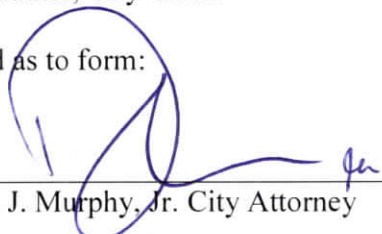
Mayor George H. Hatch

Attest:



Sharon Lauther, City Clerk

Approved as to form:



Frederick J. Murphy, Jr. City Attorney

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ORDINANCE ORD-2019-06
EXHIBIT 'A'

AMENDMENT TO THE CODE OF ORDINANCES OF
THE CITY OF MULBERRY, FLORIDA:

(In this Exhibit, language added to the Code of Ordinances is typed in underlined text and language deleted from the Code of Ordinances is typed in ~~strikethrough~~ text.)

Chapter 14 – OFFENSES

ARTICLE I. - IN GENERAL

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~~Sec. 14-2. Sound truck and sound amplifying devices; permit.~~

- (a) ~~It shall be unlawful for any person, firm or corporation to operate or permit to be operated in the city any sound amplifying devices or equipment for any purpose whatever whether stationary or operated from a vehicle or other carriage unless a permit has been obtained from the city manager.~~
- (b) ~~The words "sound amplifying equipment" as used in this section shall mean any machine or device for the amplification of any sound.~~

~~Sec. 14-3. Loud, raucous noises prohibited.~~

~~It shall be unlawful for any person to make any loud and raucous noise to the disturbance of the peace. Any person to whom a permit has been issued under section 14-3 who causes or permits loud and raucous noises shall subject the permit to immediate revocation.~~

Sec. 14-4 14-2 - Smoking and other tobacco products.

- (a) The purpose of this policy is to protect the public health, comfort, and environment for all citizens and city employees by creating areas in public places and at public meetings that are reasonably free from tobacco products smoke, (including e-cigarettes) and to comply with the Florida Clean Air Act.
- (b) No employee, guest, visitor or other person may smoke in any City building, facility or vehicle. This includes, but is not limited to, private offices, hallways, rest rooms, conference rooms and break rooms, even with only one occupant.
- (c) Smoking and other tobacco use is permitted outdoors except for the following conditions:

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- (1) Whenever a safety hazard exists;
 - (2) In any area where smoking and other tobacco use is specifically prohibited by federal, state, county or city ordinance;
 - (3) In any area posted "No Smoking".
- (d) The city manager is responsible for ensuring City-wide implementation of this policy. Department heads and managers are responsible for uniform implementation of this policy in their respective work areas, facilities and buildings.
- (e) Violation of this policy shall subject the employee to disciplinary action up to and including termination. Non-employee violators may be subject to penalties as provided in chapter 1, section 1-12 of the Mulberry Code of Ordinances.
- (f) Citizens, clients, contractors and visitors to city facilities are expected to comply with this policy. Violators will be requested to extinguish their smoking material or leave the building/facility area if they refuse to do so.

Secs. ~~14-5~~ 14-3—14-30. - Reserved.

...

ARTICLE VII. - NOISE AND SOUND CONTROLS

Sec. 14-150. - Title.

This article shall be known and may be cited as the Mulberry Noise and Sound Control Ordinance.

Sec. 14-151. - Findings of fact.

The findings of fact in the preamble and wherefore clauses to Ordinance ORD-2019-06 are incorporated herein by reference and made a part hereof.

Sec. 14-152. - Authority.

This article is enacted under the home rule authority and power of the City of Mulberry, Florida as granted by the *Municipal Home Rule Powers Act*, F.S. Chapter 166, and as secured by Article II, Section 7(a) of the Florida Constitution, which provides that adequate provision shall be made by law for the abatement of excessive and unnecessary noise and Article VIII, Section 2(b) of the Florida Constitution, which provides municipalities with governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services and authorizes municipalities to exercise any power for municipal purposes, except as otherwise provided by general law.

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Sec. 14-153. - Scope.

This article shall be effective throughout the incorporated area of Mulberry, Florida.

Sec. 14-154. - Definitions.

As used in this article, the following terms shall have the following meanings:

Noise disturbance shall mean any sound which is:

- (a) Of such duration, volume, or intensity as to be injurious to human or animal life, or property;
- (b) Of such duration, volume, or intensity as to unreasonably interfere with the comfortable enjoyment of life, property, or the conduct of business;
- (c) Of such duration, volume, or intensity as to alarm, disturb, or annoy reasonable people; or
- (d) Unreasonably loud, raucous, jarring, disturbing, unseemly, or a nuisance.

Amplified shall mean increased in volume or intensity by means of an electrical or mechanical device.

Motorized vehicle shall mean any transportation vehicle that is propelled, other than by human or animal power, on land. This includes, but is not limited to, motorcycles, ATVs, go-karts, automobiles, and trucks.

Sec. 14-155. - Prohibition of noise disturbance.

No person or business may make, continue, permit, or cause to be made or continued, any noise disturbance as defined in this article.

Factors that shall be considered in determining whether a noise disturbance in violation of this article has occurred, shall consist of, but may not necessarily be limited to, the following:

- (a) The duration, volume, or intensity of the noise;
- (b) The nature of the area and the land use district from which the sound emanates in relation to the area where it is perceived;
- (c) The time of day or night the noise occurs; and/or
- (d) Whether the noise is recurrent, intermittent, or constant.

Sec. 14-156. - Enforcement.

All municipal code enforcement officers, police officers, state and county law enforcement officers and any other person authorized to enforce municipal ordinances may enforce the provisions of this article. Any enforcement action or legal remedy available under controlling state law, including, but not limited to, prosecution as a misdemeanor with a fine not exceeding five hundred dollars (\$500.00) or by imprisonment for a term not exceeding sixty (60) days or by both fine and imprisonment, may be imposed as a penalty. When enforced by a code enforcement officer, the enforcement provisions and procedures contained Article V of Chapter 2 of this code, as may be amended, are incorporated herein by reference and will apply. Nothing contained herein shall prevent the city from taking such other lawful action in law and equity as may be necessary to remedy any violation of any part of this division, including without limitations:

- (a) Pursuit of injunctive and/or declaratory relief in a court of competent jurisdiction; and
- (b) Utilizing any other action or enforcement method permitted by law.

Sec. 14-157. - Specific prohibitions.

The following specified acts and circumstances are hereby declared to constitute a prohibited noise disturbance in violation of this article; *provided however*, such enumeration is not and shall not be deemed to be exclusive; provided further that all other acts and circumstances meeting the definition of noise disturbance are likewise declared to be in violation of this article.

- (a) ***Radios, televisions, musical instruments and similar devices, and amplified human voice.*** Playing or permitting the playing of any radio, television, audio system, musical instrument or similar device, or amplifying the human voice, sound or music, to such a volume as to be unreasonably loud, raucous, jarring, unseemly or disturbing to people within the area of audibility.
- (b) ***Barking dogs.*** Allowing a dog to bark, howl, or whine either (1) continuously between the hours of 9:00 p.m. and 6:00 a.m. or (2) at any time when such barking, howling or whining rises to the level of a noise disturbance under section 14-155 of this code.
- (c) ***Motorized vehicles.*** Driving a motorized vehicle in a manner that causes the tires to screech or squeal repeatedly on public or private property such that it causes a noise disturbance; repeatedly accelerating and/or decelerating a motorized vehicle on public or private property such that it causes a noise disturbance; or repeatedly shifting the gears of the motorized vehicle up and down on private or public property, such that it creates a noise disturbance.

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Sec. 14-158. - Liberal, non-conflicting construction.

The provisions of this article shall be liberally construed such that its purpose is effectively rendered in the interest of the health, safety, and welfare of the citizens and residents of Mulberry.

Sec. 14-159. - Exemptions.

The provisions of this article, except for those specific prohibitions set forth in Section 14-157 of this code, shall not apply to the following sounds:

- (a) The unamplified human voice;
- (b) Railway locomotives or cars;
- (c) Household or farming tools, appliances, and equipment meeting manufacturer's specifications as to sound, if applicable;
- (d) Aircraft and airport activity conducted in accordance with federal laws and regulations;
- (e) Maintenance of public service facilities;
- (f) Law enforcement activities, including training;
- (g) Licensed game hunting activities;
- (h) Emergency signals during emergencies;
- (i) Emergency testing;
- (j) Refuse collection and mosquito fogging;
- (k) Operation of any regulated or publicly owned utility;
- (l) Construction activities exempt from obtaining a development permit, or for which the city has issued a development permit; provided such activity occurs between 6:00 a.m. and 9:00 p.m.;
- (m) Organized athletic contests provided such activity occurs between 6:00 a.m. and 9:00 p.m.;
- (n) Sounds relating to and originating within any nonresidential zoning districts of the city that conform to the requirements of the city's *Unified Land Development Code* (except for those sounds specifically prohibited in section 14-157 of this article);

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- (o) Sounds relating to and originating from legal, pre-existing, nonconforming, commercial and industrial activities (except for those sounds specifically prohibited in section 14-157 of this article);
- (p) Boats and boating activity;
- (q) Phosphate mining activity;
- (r) Emergency devices and vehicles used for the purpose of alerting people of an emergency, or the emission of sound in performance of emergency work;
- (s) Lawful public gatherings provided such activity occurs between 6:00 a.m. and 9:00 p.m. (except for those sounds specifically prohibited in section 14-157 of this article); and
- (t) Reasonable operation of equipment associated with the following activities between 6:00 a.m. and 9:00 p.m.: Lawn care, soil cultivation, maintenance of trees, hedges, and gardens; the use of lawnmowers, saws, and tractors; tree trimming; and limb clipping.

Sec. 14-160. - Separate violations; penalties.

Each separate occurrence shall be a separate violation.

Sec. 14-161. - Resolutions.

The city commission may adopt such resolutions as are necessary to effectively administer this division.

Sec. 14-162. - Unreasonably excessive noise in motor vehicles.

- (a) **Purpose and intent.** This section is not intended to limit or regulate the content of speech.
- (b) **Definitions.** For the purpose of this section, the following definitions apply:

Plainly audible means any sound produced by a radio or other mechanical or electrical sound making device or instrument from within a motor vehicle, including sound produced by a portable sound making device, that can be clearly heard outside the motor vehicle by a person using his or her normal hearing facilities at a distance of fifty (50) feet or more from a motor vehicle.

Unreasonably excessive is when the sound is plainly audible at a distance of fifty (50) feet or more from a motor vehicle.

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Law enforcement officer means any sworn law enforcement officer.

(c) Prohibited acts.

(1) It is unlawful for any person who operates or occupies a motor vehicle within the corporate limits of the city to operate or amplify the sound produced by a radio or other mechanical or electrical sound making device or instrument from within the motor vehicle so that the sound is unreasonably excessive.

(2) To determine whether sound is plainly audible, measurements shall be taken in accordance with the following:

(A) The primary means of detection shall be by means of the law enforcement officer's ordinary auditory senses, so long as the law enforcement officer's hearing is not enhanced by any device, such as a microphone or hearing aid.

(B) The law enforcement officer must have a direct line of sight and hearing to the motor vehicle producing the sound so that the law enforcement officer can readily identify the offending motor vehicle and the distance involved.

(C) The law enforcement officer need not determine the particular words or phrases being produced or the name of any song or artist producing the sound. The detection of a rhythmic bass reverberating type sound is sufficient to constitute a plainly audible sound.

(d) Penalties. Any person, entity, group, representative, or corporation violating any provision of this section, shall be subject to the following penalties:

(1) **First offense:** A fine of one hundred dollars (\$100.00).

(2) **Second offense:** A fine of two hundred fifty dollars (\$250.00).

(3) **Third or subsequent offense:** A fine of five hundred dollars (\$500.00).

(e) Conflicts with other laws. If the instance arises that the provisions or requirements of this section conflict with the requirements or provisions of any other adopted ordinances or provisions of this code, then the requirements adopted in this section shall apply over any other provision in conflict therewith.

(f) Enforcement. This section may be enforced by any law enforcement officer with geographic enforcement authority over the corporate limits of the city. Fines assessed under this section shall be distributed in accordance with all applicable

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local ordinances and Florida Statutes. Thereafter, remaining funds from the fines shall be distributed in the following manner: to the city, eighty (80) per cent of the remaining funds shall be distributed by the clerk; to the county, twenty (20) per cent of the remaining funds shall be distributed by the clerk.

- (g) *Relationship to County Ordinance 14-073.* This section constitutes the adoption of and local implementation of Ordinance 14-073 promulgated by the Board of County Commissioners of Polk County, Florida within the municipal limits of the city.

Sec. 14-163. - Outdoor concert rules.

- (a) *Definitions.* As used in this section, the following terms shall have the following meanings:

Outdoor concert shall mean a public or private performance of singers, instrumentalists, and/or recorded/electronic music using amplified speakers on a temporary or permanent stage in the open air, or in a partially enclosed (less than four (4) sides of a quadrangle or two hundred seventy (270) degrees of circular or polygon enclosure) building, or in a tent, or other similar temporary or permanent structure.

Event shall mean a single outdoor concert conducted at a specific location starting with the first performance of singers, instrumentalists, and/or recorded/electronic music and concluding with the last performance of singers, instrumentalists and/or recorded/electronic music.

- (b) *Scope.* This section shall be effective throughout the city. This section is limited to the regulation of outdoor concerts. Nothing herein shall be deemed to waive the requirements of other applicable ordinances, including, without limitation, the other sections of this article, the *Unified Land Development Code of the City of Mulberry* and the City of Mulberry Comprehensive Plan.

- (c) *Prohibition.* Outdoor concerts shall not be conducted after the hours of 11:00 p.m. and before 10:00 a.m.

- (d) *Waivers.*

(1) *Authority to grant waiver.* The city commission may grant a waiver from the strict application of this section, on a "per event basis," if the following procedures are followed and findings made.

(2) *Application.* Applications for a waiver from this section shall be filed with the city manager and shall be accompanied by the applicable fee established by resolution of the city commission. All such applications must contain:

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- (A) The name, address, and telephone number of the applicant;
 - (B) A reasonably detailed description of the event for which the waiver is requested; including, without limitation: date and times; what is proposed; how many attendees expected; public health, safety, and welfare precautions; safety plan; and, noise attenuation utilized.
 - (C) Applicant's reasonably detailed statement addressing applicant's position that the criteria for granting a waiver will be met.
- (3) ***Criteria for granting a waiver.*** In order to authorize a waiver from the terms of this section, the board shall consider the following factors:
- (A) The findings and recommendations of the city manager;
 - (B) Whether granting the waiver will be in accordance with the general intent and purpose of the section, whether the concert event is in compliance with other applicable city regulations, and whether the waiver will or will not be injurious to the area involved or otherwise detrimental to the public health safety and welfare;
 - (C) Whether special conditions and circumstances exist which are peculiar to the particular concert event involved and which are not applicable to other concert events in the city;
 - (D) Whether the waiver requested is the minimum waiver possible from the requirements of this section; and
 - (E) Whether the granting of the waiver circumvents previous in force approvals of the applicant, or an in force condition of approval placed on development, zoning or land use by any city development board or the city commission.
- (4) ***Conditions, restrictions, and safeguards.*** The city commission may approve, approve with conditions, or deny the request. The city commission may prescribe appropriate conditions, restrictions and safeguards in granting a waiver. Violation of any conditions, restrictions, and safeguards, when made a part of the terms under which the waiver is granted, shall be considered a violation of this section.
- (5) ***Appeals from decisions of the city commission.*** Any person or persons aggrieved by any decision of the city commission shall be entitled to a review of the decision by the Circuit Court of the 10th Judicial Circuit in and for Polk County, Florida by filing an appropriate petition with the clerk of the court within thirty (30) calendar days after the city

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commission's decision.

- (e) **Narrow construction.** The provisions of this section shall be narrowly construed such that its purpose is effectively rendered in the interest of the health, safety, and welfare of the citizens and residents of Mulberry and the First Amendment rights enjoyed by everyone.
- (f) **Separate violations.** Each separate occurrence of a violation of this section, or a violation of the terms of a waiver granted pursuant to this section, shall be a separate violation.