

CITY OF MIDDLETOWN, KENTUCKY
ORDINANCE 07-09-20-B, SERIES 2020
AN ORDINANCE REGULATING TO NOISE

WHEREAS, the City of Middletown does not currently have a noise ordinance;
and

WHEREAS, the City of Middletown wishes to implement regulation of noise in
the city to ensure residents the quiet enjoyment of their homes;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION
OF MIDDLETOWN:**

Section 1. Definitions

BONA FIDE FARMING OPERATION. The operation and maintenance of a farm, situated on five contiguous acres or more of land used for the production of livestock, poultry, poultry products, dairy, dairy products, or horticulture products or for the growing of crops such as, but not limited to, tobacco, corn, soybeans and wheat.

CONSTRUCTION or DEMOLITION ACTIVITY. The erection (including excavation), demolition, alteration, or repair of any building, structure or roadway, for which all necessary and proper governmental permits have been obtained.

INTENSITY. The magnitude and strength of noise.

NOISE. The intensity, frequency, duration and character of sound or sounds from a source or sources.

PARKING LOTS. Any off-street parking facility for public use, and the approaches to same, whether publicly or privately owned, and shall include but not be limited to: parks, shopping centers, restaurants, entertainment centers, taverns, car washes, banking or financial institutions, whether publicly or privately owned, operated or controlled.

PERSON. Any person, firm, association, partnership, joint venture, corporation or any private entity of any nature.

PLAINLY AUDIBLE. Capable of being distinctly heard by a person with normal hearing.

RIGHT-OF-WAY. Any road, street, avenue, alley, boulevard, highway, lane or court, including the berm, shoulder, or any public property adjacent thereto, bridge, viaduct, trestle, and the approaches to them, or sidewalk.

UNREASONABLE PERIOD OF TIME. A period of time in excess of that necessary to accomplish:

1. A danger warning with a horn or other audible signaling device; or
2. The preservation of protection of property of the life, safety, or welfare of a person or persons by use of an audible signaling device.

UNREASONABLY LOUD, HARSH or EXCESSIVE NOISE. Any manufactured noise plainly audible at a distance of 50 feet from its point of origination or emanation.
VEHICLE. Any machine or device in, on or by which any person or property is or may be transported or drawn on any right-of-way or parking lot.

Section 2. Unlawful Conduct.

1. It shall be unlawful for any person within the City of Middletown to make, continue, or cause to be made or continued, any unreasonable loud, harsh or excessive noise which either annoys, disturbs, injures, or endangers the comfort, repose, health, peace or safety of others, unless the making and the continuing of the noise is necessary for the protection or preservation of property or the life, health or safety of a person or persons.
2. The following acts are hereby declared to be unreasonably loud, harsh or excessive noises in violation of this ordinance, but the enumeration shall not be deemed to be exclusive:
 - a. The sounding of any horn or other such audible signaling device on any automobile, motorcycle or other vehicle on any right-of-way, parking lot or other public place, except as a danger warning, for an unreasonable period of time;
 - b. The use or operation of any radio, stereo, or other machine or device for the producing, reproducing or amplification of sound in any vehicle in such a manner as to create an unreasonably loud, harsh or excessive noise, that disturbs the peace, quiet or comfort of others;
 - c. The use or operation of, or allowing the use or operation of, any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such a manner as to create an unreasonably loud, harsh, or excessive noise which disturbs the peace, quiet and comfort of others by creating or allowing a louder volume than is necessary for the convenient hearing of the person or persons who are voluntarily in the room, chamber, vehicle, or outside areas, in which any above described machine, device or musical instrument is located;
 - d. The use or operation of any vehicle in such a manner as to produce any unreasonably loud, harsh or excessive noise, or to discharge into the open air the exhaust of any vehicle except through a muffler or other device which will effectively prevent any unreasonably loud, harsh or excessive noises therefrom;
 - e. Creation of any unreasonably loud, harsh, or excessive noise in connection with the loading or unloading of any vehicle, except as provided for in Section 3, or by the operation of any such vehicle;
 - f. The use of any mechanical loudspeaker, amplifier, sound system, stereo or radio on any moving or standing vehicle for advertising, entertainment or any other purpose, in such a manner as to create an unreasonably loud, harsh or excessive noise.
 - g. Allow a dog to habitually and incessantly bark as described in Ordinance section 90.25

Section 3. Standards for Noise Pollution; Exemptions.

1. Standards. The standards which shall be considered in determining whether a violation of Section 2 hereof exists shall include but not be limited to the following:
 - a. The volume of the noise,
 - b. The intensity of the noise,
 - c. The volume and intensity of back-ground noise, if any,
 - d. The proximity of the noise to a residential area, place of public accommodation such as a hotel, motel, inn, campground and the like, health care facilities, churches or schools,
 - e. The density of inhabitation in the area within which the noise emanates,
 - f. The time of day or night the noise occurs,
 - g. The duration of the noise, and
 - h. Whether the noise is recurrent, intermittent or constant.
2. Exemptions. The following uses and activities shall be exempt from Section 2:
 - a. Noises originating or emanating from safety signals, warning devices, and emergency pressure relief valves;
 - b. Noises resulting from any authorized emergency vehicle or law enforcement training facilities;
 - c. Noises resulting from construction or demolition activity, provided such activity takes place between the hours of 7:00 A.M. and 9:00 P.M.; and 1:00 P.M. and 9:00 P.M. on Sunday;
 - d. Noises relating from the use of farm machinery or other machinery for agricultural purposes in bona fide farming operations;
 - e. Noises relating to the use of lawn mowers or other machinery for landscaping purposes between the hours of 7:00 A.M. and 9:00 P.M.;
 - f. The reasonable operation of electrical generators during power outages;
 - g. The operation of any aircraft in conformity with, or pursuant to, federal law, federal air regulations and/ or traffic control instructions;
 - h. Noises resulting from any and all transportation, flood control, utility company maintenance and construction operations at any time on rights-of-way and noises from situations which may occur on private real property, including in parking lots, deemed necessary to serve the best interest of the public and to protect the public's health and well-being, including but not limited to, street or hard surface sweeping or cleaning, debris and limb removal, removal of downed wires, restoring electrical service, repairing traffic signals, unplugging sewers, snow removal, house moving, vacuuming catch-basins, removal of damaged poles and vehicles, repair of water hydrants and mains, gas lines, oil lines, and sewers;
 - i. Noises from activities conducted in public parks or playgrounds and public or private school grounds, including but not limited to, school athletic and school entertainment events;

- j. Noises from activities conducted on property owned or operated by civic, charitable or religious organizations, including but not limited to, neighborhood or church festivals and entertainment events;
- k. Noises from activities at parades, provided a valid parade permit has been obtained from the City government;
- l. Noises from activities at firework displays, provided all necessary permits have been obtained;
- m. Noises from activities conducted on rights-of-way of the City of Middletown, including, but not limited to, festivals and entertainment events, provided all necessary permits have been obtained;
- n. Noises relating to the collection of refuse between the hours of 7:00 A.M. and 7:00 P.M.

Section 4. Severability. If any provision of this chapter as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

Section 5. Penalty.

1. A violation of this chapter shall be classified as a civil offense and shall be enforced either through the Middletown Police Department, or through the City Code Enforcement Officer and the Code Enforcement Board (“Board”) as provided in chapter 39 of the City of Middletown ordinances, or as it may be amended.
2. Any person violating any section of this chapter shall be fined not less than \$100 nor more than \$250 for a first offense within a two-year period. Any person violating any section of this chapter a second time within a two-year period shall be fined not less than \$250 nor more than \$500. Any person violating any section of this chapter a third time within a two-year period shall be fined not less than \$500 nor more than \$1,000. Each separate occurrence or each day such violation is committed or permitted to continue shall constitute a separate offense. It shall be a defense for an owner, lessee, or occupant of any premises involved in an offense by some other party, if there is posted on said property a sign, adequately noticeable in size (no larger than 12 square feet), which contains sufficient warnings as to the liability applicable for noise pollution violations. Said sign shall not contain any other messages such as advertising for said business.
3. Any person cited pursuant to this chapter may pay the minimum civil penalty within seven days from the date of the issuance or request a hearing regarding such penalty to the Board in accordance with Chapter 39 of the City of Middletown ordinances. If the person fails to respond to this citation within seven days as referenced above, the person shall be deemed to have waived the right to a hearing. In this event, the Board shall enter a final order determining that the violation was committed and impose the civil penalty set forth in the citation. Each day that a violation continues after a citation has been issued or notice has been served shall be deemed a separate offense.

First Reading: 7/9/20
Second Reading: 8/13/20
Passage and Approval: 8/13/20


Mayor J. Byron Chapman

ATTEST:

City Clerk Deborah Columbia

"Aye" Votes:
4

"Nay" Votes:
0