

ORDINANCE 2012-02

AN ORDINANCE OF THE TOWN OF MELBOURNE VILLAGE AMENDING CHAPTER 11 – NOISE; DELETING CHAPTER 11, ARTICLE I. (IN GENERAL) IN ITS ENTIRETY; CREATING A NEW CHAPTER 11, ARTICLE I. (IN GENERAL); PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Town of Melbourne Village recognizes the need to regulate loud and raucous noises for the safety, health, well-being, and comfort of the residents of the Town, and

WHEREAS, a recent judicial decision has raised concerns about the current Town Code regulating such noise,

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF MELBOURNE VILLAGE AS FOLLOWS:

SECTION 1. That the recitals and findings contained in the Preamble to this Ordinance are adopted by reference and incorporated as if fully set forth in this Section; and

SECTION 2. That Sections 11-1 through 11-3 of Article I of Chapter 11 of the Town of Melbourne Village Code of Ordinances be deleted in their entirety; and

SECTION 3. That new Sections 11-01 through Section 11-06 of Article I of Chapter 11 of the Town of Melbourne Village Code of Ordinances be created as follows:

NOISE

ARTICLE I. IN GENERAL

Sec. 11-1. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Audible means the quality or characteristic denoting that the information content of sound is unambiguously transferred to the auditor, including but not limited to the understanding of spoken speech and the comprehension of musical rhythms.

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Construction activities means any and all activity incidental to the erection, demolition, assembling, alerting, installation or equipping of buildings, structures, roads or appurtenances thereof, including land clearing, grading, excavating and filling.

Device means any equipment or mechanism that is intended to produce and which actually produces sound when installed, used or operated.

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

Emergency response vehicles means vehicles of all police and fire departments, emergency vehicles of the state, county, and municipalities within the county, emergency vehicles of any public service corporation, all ambulances and rescue vehicles.

Loud and raucous noise means any sound which, because of its volume level, duration and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities.

Motor vehicle means any vehicle that is self-propelled and every vehicle that is propelled by electric power from overhead trolley wires, but not operated on rails. This term also includes motorcycles and motor-driven vehicles.

Person means any natural person, individual, public or private corporation, firm, entity, association, joint venture, partnership, municipality, governmental agency, political subdivision, public officer or any other group whatsoever or any combination of such, jointly or severally.

Sound means an oscillation in pressure, stress, particle displacement, particle velocity or other physical parameter, in a medium with internal forces. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

Sound-producing device means any equipment or machine for the production or reproduction of speech, music or other sound, including but not limited to radios, televisions, phonographs, tape players, musical instruments, compact disc or tape cassette players, walkie-talkies, CB radios, or synthesizers.

Sound truck means any motor vehicle or any other vehicle regardless of motor power, whether in motion or stationary, having mounted upon or attached to it, any sound-

amplifying equipment.

Warning device means sound emitting devices used to alert and warn people.

Watercraft means any machine in, upon or by which any person or property is or may be transported or drawn upon or over any watercourse or body of water, including swamplands; this term shall include hovercraft and airboats.

Sec. 11-2. - Exceptions.

Loud and raucous noise does not include noise or sound generated by the following:

- (1) Cries for emergency assistance and warning calls.
- (2) Radios, sirens, horns and bells on police, fire and other emergency response vehicles.
- (3) Parades, fireworks displays and other special events for which oral or written approval from the Town Commission has been obtained, within such hours as may be imposed as a condition for oral or written Town approval.
- (4) Activities on or in town and AHF athletic facilities and on or in publicly owned property and facilities, provided that such activities have been authorized by the owner of such property or facilities or its agent.
- (5) Fire alarms and burglar alarms, prior to giving notice and a reasonable opportunity for the owner or tenant in possession of the premises served by any such alarm to turn off the alarm.
- (6) The operation of lawn mowers, edgers, trimmers and power driven hedge shears in a residential zone or within 500 feet thereof between the hours of 9:00 am and 8:00 pm.
- (7) The operation of tow trucks while assisting motorists or towing disabled vehicles.
- (8) The Operation of generators during times of electrical outages beyond the control of the resident.

Sec. 11-3. - Violations.

- (a) Any violation of any provision of this article shall be subject to penalties as provided in Section 1-9 of this Code of Ordinances.

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- (b) In addition or instead of the penalties provided in subsection (a) of this section, the Town may institute any appropriate action or proceeding including a suit for injunctive relief in order to prevent or abate violations of this article.
- (c) Nothing in this section shall be construed to prohibit any person from commencing a civil action on their own against any person who is alleged to be in violation of any provision of this section. This section shall not be construed to impair any other common law or statutory course of action or legal remedy for injury or damage arising from any violation of this section.

Sec. 11-4. - Persons responsible.

- (a) It shall be a violation of this chapter for any owner, lessee, agent, or other person in charge of or in control of any premises or a vehicle to allow or permit any loud and raucous noise to emanate from such premises or vehicle.
- (b) Any loud and raucous noise made or produced at premises or in a vehicle in which the owner, lessee or other person in control of said premises or vehicle is present shall be deemed and presumed to be made and produced with the consent and permission of the said owner, lessee or other person in charge or control of said premises or vehicle .
- (c) Any owner, lessee, agent, supervisor, or other person in charge of operating, ordering, directing or allowing the operation or maintenance of any device or machine that creates a loud and raucous noise as prohibited herein, shall be deemed guilty of violating this article.

Sec. 11-5. - Loud and raucous noise—Prohibited generally.

It shall be unlawful for any person to willfully make, continue or cause to be made or continued any loud and raucous noise. Loud and raucous noise shall mean any sound which, because of its volume level, duration and character, annoys, disturbs, injures, or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities within the limits of the town. The term "loud and raucous noise" includes, but not in way of limitation, the kinds of noise generated by the activities enumerated in section 11-6, except as provided in section 11-3. The term shall be limited to loud and raucous noise heard upon the public streets, in any public park, in any public building or upon the grounds thereof while in use, upon any parking lot open to members of the public as invitees or licensees, or in any occupied residential unit which is not the source of the noise or upon the grounds thereof, and in any event at a location of not less than 50 feet from the radio, television, stereo, loudspeaker, motor, horn or other noise source.

Sec. 11-6. - Same—Enumeration.

The following acts are declared to be public nuisances and in violation of this article:

- (1) *Engine exhaust.* The discharge into the open air of the exhaust of any steam engine or internal combustion engine, whether stationary or moving, except through a muffler or other device which will effectively prevent loud and raucous noises therefrom.
- (2) *Operation of equipment at night, on Sundays.* The operation between the hours of 8:00 p.m. and 7:00 a.m., on any day or at any time on Sunday, of any pile driver, steam shovel, pneumatic hammer, derrick, dredge, steam or electric hoist or other appliance, machine or equipment, the use of which causes a loud and raucous noise.
- (3) *Blowers.* The operation of any blower or power fan or any internal combustion engine, the operation of which causes a loud and raucous noise, unless the noise from such blower or power fan is muffled or such engine is equipped with a muffler device sufficient to prevent loud and raucous noise.
- (4) *Horns, signaling device, etc.* The sounding of any horn, whistle or other audible signaling device, not excepted by this ordinance, so as to create a loud and raucous noise.
- (5) *Radios, televisions, amplifiers, phonographs, etc.* The using, operating or permitting to be played, used, or operated any radio, stereo, television, amplifier, musical instrument, phonograph or other device for the production or reproduction of sound in such manner as to cause loud and raucous noise by any person present and in control of such device, or by any person present and in control of the premises wherein such device is located.
- (6) *Sound trucks.* No amplifier or loudspeaker in, upon or attached to a sound truck or other device for amplifying sound shall be operated or permitted to operate within the town for any purpose or to attract the attention of the public
- (7) *Yelling, shouting, etc.* Yelling, shouting, whistling or singing at any time or place so as to create a loud and raucous noise between the hours of 8:00 pm and 8:00 am on any day.
- (8) *Defect in vehicle or load.* The use of any motor vehicle so out of repair, so loaded or in such manner as to create loud grating, grinding, rattling or other loud and raucous noise or which is not equipped with a muffler in good working order and in constant operation so as to prevent loud and raucous noise.

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- (9) *Construction or repairing of buildings.* The erection, including excavating or demolition, alteration or repair of any building so as to create a loud and raucous noise between the hours of 8:00 pm and 8:00 am on weekdays, or between the hours of 8 pm on Friday through 10 am on Saturday, or 8 pm on Saturday through 8 am on Monday, except in case of urgent necessity in the interest of public health and safety, and then only with written approval from the Mayor. Such approval may be granted for a period not to exceed three working days or less while the emergency continues and may be renewed for successive periods of three days or less while the emergency continues. If the Mayor should determine that the public health and safety necessitates the issuance of such approval and will not be impaired by the erection, demolition, alteration or repair of any building or the excavation of streets and highways between the hours of 8:00 p.m. and 7:00 a.m., or on Sunday, the Mayor may grant permission for such work to be done between such hours or within a shorter time period during such hours, upon application being made at the time the permit for the work is issued or during the progress of the work; provided, however, that the making of minor repairs and alterations to a building, which repairs do not require a building permit, by the owner or occupant thereof between the hours of 9:00 a.m. and 6:00 p.m. on Sundays shall not be within the proscription of this subsection.
- (10) *Noises used to attract attention.* The use of any drum or other instrument or device to create a loud and raucous noise.
- (11) *Dropping or throwing objects.* The unnecessary dropping or throwing of objects on or against the ground, pavement, concrete walk or other object so as to create loud or unnecessary clanging, grating, rattling or other noise.
- (12) *Motor vehicles.* Loud and raucous noise created by any vehicle which is self-propelled and every vehicle which is propelled by electric power from overhead trolley wires, but not operated on rails, including motorcycles or motor-driven vehicles. This section shall also prohibit the intentional and repeated creation of loud and raucous noise by watercraft. However, this provision shall not apply to motor vehicles operating on the public streets or highways of the town. No provision herein is intended to conflict or otherwise pre-empt F.S. §§ 326.272 (exhaust prevention of noise), 316.293 (motor vehicle noise), or 316.3045 (operation of radios or other mechanical devices or instruments in vehicles) or their successor statutes.

(13) *Tire screeching*. The intentional repeated creation of loud and raucous noise through the acceleration, turning or stopping of any motor vehicle

SECTION 4. In the event that a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of the ordinance shall not be affected and it shall be presumed that the Town Commission of the Town of Melbourne Village did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Commission would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

SECTION 5. Conflicts. All Sections or parts of Sections of the Town's Codes and Regulations, all Ordinances or parts of Ordinances, and all Resolutions or parts of Resolutions, that are inconsistent or in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 6. This ordinance shall become effective immediately upon adoption.

PASSED AND ADOPTED by the Town Commission of the Town of Melbourne Village on the First Reading this 26th day of June, 2012,

AND on the Second and Final Reading on this __ day of _____, 2012.

(Original Signed)
Scott McCoy
Mayor

ATTEST: _____
(Original Signed)
Gail E. Griswold