

ORDINANCE NO. 542

AN ORDINANCE PROVIDING FOR THE CONTROL OF NOISE
IN THE TOWN OF MIDDLEBURY, INDIANA

WHEREAS, Indiana Code Sections 36-1-3-1 et. seq. permit any town in the State of Indiana to exercise any power or perform any function necessary to the public interest in the context of its municipal or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or preempted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS, excessive noise and sound from motor vehicles and other sources within the town limits of Middlebury is a detriment to the public health, safety, welfare and quality of life of the citizens of the town;

WHEREAS, it is therefore the policy of the Town of Middlebury to prevent excessive noise and sound in order to preserve, protect and promote the health, safety, welfare and quality of life of its citizens;

WHEREAS, pursuant to the authority vested by Indiana Code Sections 36-1-3-1 et. seq., Indiana Code Sections 36-5-2-1 et. seq., and Indiana Code Sections 36-8-2-4 and 36-8-2-8, the Town Council of the Town of Middlebury desires to establish a noise ordinance for the Town of Middlebury, Indiana subject to the provisions hereinafter stated;

NOW, THEREFORE, BE IT ORDAINED, ORDERED AND RESOLVED by the Town Council of the Town of Middlebury, Indiana, as follows:

Section 1. Title

This Ordinance shall be known as the Town of Middlebury Noise Ordinance.

Section 2. Definitions and Interpretations

- 2.1 Motor Vehicle is herein defined as a vehicle that is self-propelled.
- 2.2 Person is herein defined as any individual, partnership, limited partnership, limited liability partnership, limited liability company, association, corporation or other entity.
- 2.3 Premises is herein defined as a tract of land including its buildings and structures.
- 2.4 Sound Amplification System is herein defined as any apparatus used for the amplification of sounds from any radio, tape player, cassette player, compact disc player, loudspeaker, sound amplifier, alarm or other sound-generating device, including any apparatus for the amplification of the human voice.
- 2.5 Town is herein defined as the Town of Middlebury, Indiana.
- 2.6 Town Council is herein defined as the Town Council of the Town of Middlebury, Indiana.
- 2.7 Unreasonable or Excessive Noise is herein defined as sound that is of a volume, frequency or pattern that prevents, disrupts, injures, or endangers the health, safety, welfare, prosperity, comfort, or repose of reasonable persons of ordinary sensitivities within the corporate boundaries of the Town, given the time of day or environment in which the sound is made.
- 2.8 Vehicle is herein defined as a device in, upon, or by which a person or property is, or may be, transported or moved.
- 2.9 For purposes of this Ordinance, the singular shall include the plural and the plural shall include the singular, unless the context requires otherwise.

Section 3. Prohibited Noises

- 3.1 Unreasonable or Excessive Noise.

Except as otherwise provided in this Ordinance, it shall be a violation of this Ordinance for any Person to cause or make any Unreasonable or Excessive Noise or to allow any Unreasonable or Excessive Noise to be caused or made in or on any real property or personal property within the Town limits occupied or controlled by that Person.

3.2 Specific Prohibitions.

In addition to the general noise prohibition in Section 3.1, the following acts within the Town limits are violations of this Ordinance:

A. Motor Vehicle Noises

- i. No Person shall operate any Motor Vehicle on a public street, road, alley, highway, park or other public property in which the engine, muffler, exhaust and/or other noise control equipment have been altered, removed or maintained in such disrepair as to generate an Unreasonable or Excessive Noise.
- ii. No Person shall operate or use any Motor Vehicle in such a manner to create Unreasonable or Excessive Noise from squealing of tires or grating, grinding, rattling or other noises from disrepair.
- iii. No Person operating a Motor Vehicle containing an engine brake system shall apply the engine brakes.
- iv. Except as used for warning purposes, no Person shall use, operate or sound any horn or other signaling device on any Motor Vehicle on a public street, road, alley, highway, park or other public property for any unreasonable period of time.
- v. No Person shall play, use, or operate or allow to be played, used, or operated in or on any Motor Vehicle any sound amplification system at a volume that is louder than necessary for the convenient hearing of persons who are inside the Motor Vehicle within which such device is played, used or operated.

B. Noises from Premises.

- i. No Person shall play, use, or operate or allow to be played, used, or operated on a Premises any sound amplification system in such a manner that the sound produced causes Unreasonable or Excessive Noise heard beyond the boundaries of the Premises by a person with normal hearing.
- ii. No person shall keep any animal, including but not limited to dogs and birds, on a Premises that causes Unreasonable or Excessive Noise clearly audible to a person from any place other than the Premises from which the animal is located.

C. Machine Noises.

- i. No person shall engage in the erection, excavation, demolition, alteration or repair of any building or real estate causing Unreasonable or Excessive Noise between the hours of 9:00 PM and 6:00 AM.
- ii. No person shall engage in the operation, alteration or repair of any pile driver, hydraulic shovel or grader, pneumatic hammer, hoist, blower, fan or other equipment causing Unreasonable or Excessive Noise between the hours of 9:00 PM and 6:00 AM.

Section 4. Exemptions

Noises from the following uses and activities shall be exempt from the prohibitions in Section 3 of this Ordinance:

- 4.1 Non- amplified crowd noises resulting from legal activities between the hours of 6:00 AM and 9:00 PM;
- 4.2 Any authorized emergency, fire, law enforcement, or governmental vehicle when responding to an emergency call, acting in time of emergency or in connection with official business;
- 4.3 Emergency signaling devices, such as severe weather sirens, safety signals, or other devices used as a warning of danger or an emergency.
- 4.4 Emergency work including work necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger or work by private or public utilities when restoring utility service;
- 4.5 Properly operating building alarms or vehicle alarms;
- 4.6 Properly operated and licensed aircraft;
- 4.7 Properly operated and licensed refuse collection vehicles operating between 6:00 AM and 9:00 PM;
- 4.8 Any activity sponsored, permitted or authorized by the Town Council, Middlebury Park and Recreation Board, Middlebury Community School Board, or any other governmental body having jurisdiction and control over the Premises including, but not limited to, parades, festivals, fairs, sporting events, concerts, firework displays, or school bands;

- 4.9 Legal consumer fireworks properly used during the times allowed by the State of Indiana;
- 4.10 Any construction or domestic power equipment operated between 6:00 AM and 9:00 PM, provided that such equipment is operated with the manufacturer's mufflers and noise reducing equipment in use and in proper working condition;
- 4.11 Church or worship center bells sounded in conjunction with a function or service.
- 4.12 Any other noise resulting from activities of a temporary duration permitted by the Town Council in accordance with Section 5 of this Ordinance.

Section 5. Temporary Permits

Applications for a permit for temporary relief from the requirements in this Ordinance may be made in writing to the Town Council. Any permit granted by the Town Council under this section shall contain all conditions upon which said permit has been granted and shall specify a reasonable time that the permit shall be effective. The Town Council may prescribe any reasonable conditions or requirements it deems necessary to minimize adverse effects upon the community or the surrounding neighborhood. The Town Council may grant a permit as applied for only if it is found that:

- 5.1 Additional time is reasonably necessary for the applicant to alter or modify the activity or operation to comply with this Ordinance; or
- 5.2 The activity, operation or noise source will be of a temporary duration, and cannot be done in a manner that would comply with this Ordinance; and
- 5.3 No other reasonable alternative is available to the applicant; and
- 5.4 The noise source as permitted will not violate recognized safety standards.

Section 6. Enforcement, Penalties and Appeals

- 6.1 This Ordinance may be enforced by the authorized agents of the Town Council or by a law enforcement agency.
- 6.2 Any Person charged with violating the provisions of this Ordinance may, in the discretion of the enforcement officer, be issued an official warning. If an official warning is issued it shall be considered as affording the violator one (1) opportunity to comply with the provisions of this Ordinance. If any Person fails

to comply with the provisions of this Ordinance, the Ordinance violation shall be enforced in accordance with Indiana Code 34-28-5-1 in a manner similar to that of infractions with complaint and summons described in Indiana Code 9-30-3-6 issued by the Middlebury Police Department or other enforcement agency.

- 6.3 Any Person violating any of the provisions of this Ordinance shall be subject to an initial civil penalty of Fifty Dollars (\$50). Each day such violation continues or is committed shall constitute a separate offense. A second violation in any twelve month period is subject to a civil penalty of One Hundred Dollars (\$100). Subsequent violations in any twelve month period are subject to a civil penalty of Five Hundred Dollars (\$500).
- 6.4 Upon written notices of a violation by the same Person for the same offense three (3) times within a consecutive twelve month period, when such noise is created by the same noise emitter or the same type of noise emitter, the noise creating device may be ordered by the enforcement officer to cease being used or operated until it can be brought into compliance with this Ordinance.
- 6.5 For the purposes of this Ordinance, the violator shall be the Person or Persons who created, caused to be created, permitted to be created or otherwise generated any source of noise in violation of this Ordinance; the Person or Persons in possession of a sound amplification system played, used or operated in violation of this Ordinance; or the Person in control of a Motor Vehicle operating in violation of this Ordinance.

Section 7. Severability

The provisions of this Ordinance are hereby declared to be severable. If any provision contained in this Ordinance shall be declared to be invalid or void for any reason, such declaration shall not affect the remaining portions of this Ordinance which shall remain in full force and effect.

Section 8. Effective Date and Repealing Effect

This Ordinance shall take effect upon adoption and publication in accordance with the requirements of law. This Ordinance repeals Ordinance No. 130 dated April 6, 1970 of the Town as well as any other ordinances or parts thereof in conflict herewith.

ORDAINED AND ADOPTED this 2 day of July, 2012.

TOWN COUNCIL OF THE TOWN OF
MIDDLEBURY, INDIANA

By Gary L. O'Dell
Gary L. O'Dell, President

Attest:

Peggy A. Hutchison
Peggy Hutchison
Clerk-Treasurer