

**CITY OF WEWAHITCHKA
ORDINANCE NO. 2022-1219L**

AN ORDINANCE OF CITY COMMISSION OF THE CITY OF WEWAHTICHKA, FLORIDA, TO REGULATE NOISE WITHIN THE CITY, SETTING FORTH STATEMENT OF PURPOSE AND OBJECTIVES, PROHIBITING THE MAKING OF LOUD, UNREASONABLE, UNNATURAL OR UNUSUAL NOISES AS SET FORTH HEREIN; PROVIDING PENALTIES FOR VIOLATIONS; PROVIDING FOR THE ENFORCEMENT HEREOF; PROVIDING SEVERABILITY CLAUSE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARINGS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the making, creation or maintenance of loud, unreasonable, unnatural or unusual noises which are prolonged and unusual in their time, place and use, and which are a detriment to the public health, comfort, safety, welfare and prosperity of the residents of the City; and

WHEREAS, there is overriding necessity of and for the public interest for the provisions and prohibitions contained in this ordinance regulating noise within the city as set forth and herein and the same is declared as a matter of legislative determination and public policy to further the protection of the public; and,

WHEREAS, pursuant to Article VIII, Section (1)(f) of the Florida Constitution and Section 166.021, Florida Statutes, the City of Wewahitchka has broad home rule powers to carry out city government, including the power to adopt ordinances to provide for the common good; and

WHEREAS, the City Commissioners desire to repeal and replace any ordinance wherein sections, subsections, paragraphs, subparagraphs, divisions, subdivisions, clauses, sentences, phrases, words, and provisions of the current noise control regulations are deemed obsolete or superfluous, and/or which have not been enforced, and/ or which are not enforceable, and/or do not meet the current standard of care, values and protection sought by the City, and/or which would be severable by a court of competent jurisdiction; and

WHEREAS, in order to carry out the purpose of the Florida Statutes in conjunction with the purposes of the City's intent for noise regulation and to uphold the regulations whereby enforcing both, the City Commissioners find and determine that the City should regulate through specific language and guidelines set out by this ordinance; and

WHEREAS, the City Commissioners find and determine that in order to preserve, protect and promote the safety and general welfare of the residents of the City as well as enhance the quality of life in the City of Wewahitchka, it is necessary to strictly regulate and enforce noise regulation and controls; and

WHEREAS, the City Commissioners find and that the City of Wewahitchka has consistently adopted and enacted severability provisions in connection with its Ordinance provisions, and the City Commissioners wish to ensure that severability provisions apply to its noise control and; and

WHEREAS, the provisions and prohibitions contained in this ordinance and enacted herein are in the pursuance of and for the purposes of protecting and promoting the public health, comfort, convenience, safety, welfare and prosperity, and the peace and quite of the city and its inhabitants.

NOW THEREFORE BE IT ORDAINED AS FOLLOWS:

1. NOISE CONTROL REGULATIONS.

It shall be unlawful for a person within the City to make, continue or cause to be made or continued, any loud or unusual noise which unreasonably either annoys, disturbs or endangers the comfort, repose, health, peace or safety of others and the same is declared to be a public nuisance, and the following acts, among others, are hereby declared to be loud and disturbing noises in violation of this section, but this enumeration shall not be deemed to be exclusive:

a. Except by special permit, no audio device, such as loudspeakers, television, radio, musical instrument or other noise mechanisms except equipment used by City of Wewahitchka officials or law enforcement, fire rescue/safety officials and personnel, shall be used in City of Wewahitchka in a manner:

i. That exceeds a noise of 60 decibels (DBA) measured on the A-weighted scale at 50 feet from the sound source; or

ii. that otherwise violates either this City of Wewahitchka Noise Control or Nuisance Ordinances; or

iii. the playing, using or operating of, or permitting to be played, operated or used, any radio, receiving set, musical instrument, television set, phonograph or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of the neighborhood and vicinity thereof; or

iv. The playing, using or operating of, or permitting to be played, operated or used, any radio, receiving set, musical instrument, television set, phonograph or other machine or device for the producing or reproducing of sound at any time of the day or night in such a manner as to be plainly audible at a distance of one hundred (100) feet from the building, structure or vehicle in which it is located or at any time or place so as to annoy or disturb the quiet, comfort or repose of reasonable persons or in any dwelling or residence; or

v. The playing, using or operating of, or permitting to be played, used or operated, any radio receiving set musical instrument, phonograph, loudspeaker, amplifier or other machine or device for producing or reproducing of sound, upon the public streets or right of ways for the purpose of commercial advertising or attracting the attention of the public to any building or structure; or

vi. The keeping of any animal which, by frequent or long continued noise, shall disturb the comfort or repose of reasonable persons in the vicinity thereof; or

vii. No person shall commit such acts causing noise and disturbance as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quite of persons who my witness and hear them, or engage in such conduct as to constitute a breach of the peace or disorderly conduct; or

vii. The construction, erection, including excavating, demolition, alteration or repair of any building between the hours of 9:00 p.m. and 7:00 a.m. which unreasonably either annoys, disturbs, or endangers the comfort, repose, health, peace or safety of others in the vicinity thereof.

2. ENFORCEMENT AND PENALITES

A violation of this ordinance shall be deemed a civil infraction and the violator shall be issued a citation for such violation at the time of the violation. The citation shall include reference to this ordinance, indicate first, second and subsequent offense and indicating the amount of the fine imposed and providing a document to the violator indicating options for disposition of this matter. The Sheriff of the County and his duly appointed deputies shall and are hereby directed to enforce provisions of the ordinance and issue citation(s) to violators:

a. The City Commission of the City of Wewahitchka is authorized to enforce this ordinance and may follow the established procedures and schedule of violations and penalties set forth below to be assessed by Gulf County law enforcement officials and County code enforcement officials through its County Court and in accordance with Florida Statute 166.0415.

- b. Violation of any provision of this ordinance shall be subject to the following penalties:
- (i) First violation: \$250.00 fine
 - (ii) Second violation: \$500.00 fine
 - (iii) Third violation: Fine not to exceed \$500.00 and/or imprisonment in the County jail not to exceed sixty (60) days.
- c. Each violation of this Ordinance shall constitute a separate offense. In the initial stages and implementation of this Ordinance, law enforcement officials may provide violators with no more than one (1) written warning.
- d. The City of Wewahitchka shall have resource to such civil and criminal remedies in law and equity as may be necessary to ensure compliance with the provisions of the section of this ordinance, including but not limited to injunctive relief to rejoin and restrain any person from violating the provisions of this section of this Ordinance and to recover such damages as may be incurred by the implementation of specific corrective actions.

3. SPECIAL MASTER HEARING AND APPEAL

Following receipt of a citation by the person charged with violation of this ordinance, the person may resolve the violation by payment of the fine indicated at the office of the Circuit Clerk of Court Gulf County Court House, Port St. Joe, Florida within 30 days of the date of the violation or the person may contest the violation by presenting written objections to the citation and request for a hearing before the special master appointed to review and hear the merits of the violation. Such request must be provided in writing by the person charged with a violation of this ordinance to the following address by certified mail within 30 days of the date of the citation for violation to:

Gulf County Special Hearing Master
c/o Chief Administrator's Office
1000 Cecil G. Costin Sr., Blvd.
Port St. Joe, Florida 32456

4. RETROACTIVITY.

All appeals of determinations of classification and/or disposition on or after adoption of this ordinance shall be subject to all sections and guidelines.

5. EFFECTIVE DATE

This Ordinance shall take effect upon final adoption.

6. SEVERABILITY

In the event that any clause, section, paragraph, or sentence of this Ordinance is deemed to be invalid or unenforceable for any reason; it shall be deemed severable, and the City Commission of City of Wewahitchka hereby declares its intent that the balance of the Ordinance shall not be affected by the said invalidity, and the remainder shall be in full force and effect.

7. REPEALER

Any and all ordinances in conflict herewith are hereby repealed to the extent of any conflict.

8. MODIFICATION

It is the intent of the City Commission of City of Wewahitchka that provisions of this Ordinance may be modified as a result of consideration that may arise during public hearings. Such modifications shall be incorporated into the final version of the Ordinance adopted by the Commissioners and filed by the City Clerk.

PASSED AND ADOPTED in regular session by the City Commissioners of City of Wewahitchka, Florida on this 23 day of June, 2022.

CITY OF WEWAHITCHKA, FLORIDA

ATTEST:

By: Rachel Jackson
Rachel Jackson, City Clerk

By: Phillip Gaskin
Phillip Gaskin, Mayor

APPROVED TO FORM:

By: Michelle Blankenship Jordan
Michelle Blankenship Jordan, City Attorney

