

**AN ORDINANCE AMENDING TITLE IV, "BUILDING REGULATIONS" OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, BY ADDING CHAPTER 13, "CONSTRUCTION WORK HOURS", SO AS TO ESTABLISH PERMITTED HOURS OF CONSTRUCTION ACTIVITY WITHIN 600 FEET OF AN OCCUPIED RESIDENTIAL USE OR A HOSPITAL AND PROVIDE FOR THE ISSUANCE OF AFTER-HOURS CONSTRUCTION PERMITS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM FINE OR PENALTY OF FIVE HUNDRED DOLLARS (\$500.00); ESTABLISHING AN EFFECTIVE DATE THAT SHALL BE 30 DAYS AFTER THE DATE OF ADOPTION OF THIS ORDINANCE; AND ORDERING PUBLICATION**

**WHEREAS**, construction and earth-disturbing activities during the evening hours have the effect of disturbing the peace of those in nearby residences and hospitals; and

**WHEREAS**, the Council finds it to be in the public interest to amend Title IV, "Building Regulations" of the City Code of the City of Midland, Texas, by adding Chapter 13, "Construction Work Hours", so as to establish permitted hours of construction activity within 600 feet of an occupied residential use or a hospital and provide for the issuance of after-hours construction permits; containing a cumulative clause; and

**WHEREAS**, the Council finds that all legal requirements and conditions precedent to the adoption of this ordinance have been satisfied; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:**

**SECTION ONE.** That Title IV, "Building Regulations" of the City Code of the City of Midland, Texas, is hereby amended to add Chapter 13, "Construction Work Hours", which shall read in its entirety as follows:

**4-13-1. Definitions.**

As used in this Chapter:

- (A) *After-hours construction activity* means construction activity during hours other than the established construction hours.
- (B) *After-hours construction permit* means a permit issued by the Building Official that authorizes after-hours construction activity.

- (C) *After-hours emergency construction activity* means after-hours construction activity that must be immediately performed to prevent or mitigate harm to the health and safety of the public or a building's occupants that may reasonably arise, or that has arisen, from a sudden and unexpected event.
- (D) *Building Official* means the City of Midland's Building Official or the Building Official's designee.
- (E) *Construction activity* means any construction, earth-disturbing activity, or stockpiling related to the erection, excavation, demolition, alteration, or repair of any building, or the clearing, grading, excavating, filling, or demolition of any construction site, or curb, gutter, or sidewalk construction.
- (F) *Established construction hours* means the hours of 7:00 a.m. to 7:00 p.m.
- (G) *Hospital* means an acute care hospital or a chronic care hospital, as such terms are defined in Section 11-1-2.01 of the City Code.
- (H) *Occupied* means being used by a person or being associated with an active City utility account.
- (I) *Residential use* has the meaning given that term in Section 11-1-2.01 of the City Code.

**4-13-2. Prohibited activity.**

- (A) *Prohibited after-hours construction activity.* A person shall not perform after-hours construction activity within 600 feet of an occupied residential use or a hospital.
- (B) *Exception.* It is an exception to the application of Subsection (A) that the person possessed an after-hours construction permit or was working at the direction of another who possessed an after-hours construction permit at the time the person performed the after-hours construction activity, and the person was acting in compliance with the conditions of the after-hours construction permit.

**4-13-3. After-hours construction permit.**

- (A) *Application.* A person may submit to the Building Official an application for an after-hours construction permit that satisfies the following requirements.
  - 1. The application shall contain a written explanation of the reasons for the request, including facts establishing:
    - (a) that the after-hours construction activity is of urgent necessity;
    - (b) that the public interest will be served by the performance of the after-hours construction activity; or
    - (c) that the after-hours construction activity will not disturb the peace and quiet of nearby occupied residential uses or hospitals.
  - 2. The application must be received by the Building Official at least five business days prior to the date of commencement of the after-hours construction activity.

(B) *Decision.* Within five business days of receiving an application for an after-hours construction permit, the Building Official shall make a determination on the application and notify the applicant thereof as provided in this Subsection.

1. If, based on the information contained in the application, the Building Official finds that the after-hours construction activity is of urgent necessity, will serve the public interest, or will not disturb the peace and quiet of nearby occupied residential uses or hospitals, the Building Official shall issue an after-hours construction permit. The after-hours construction permit shall contain the following condition: "The Permittee shall take reasonable actions to minimize noise and disruption of the occupants of property located within 600 feet of the location stated in this permit." The Building Official may make the after-hours construction permit subject to additional conditions determined by the Building Official to be reasonable. If the Building Official makes the after-hours construction permit subject to additional conditions, the Building Official shall specify the additional conditions in the after-hours construction permit.
2. If, based on the information contained in the application, the Building Official does not find that the after-hours construction activity is of urgent necessity, will serve the public interest, or will not disturb the peace and quiet of nearby occupied residential uses or hospitals, the Building Official shall issue a written decision denying the after-hours construction permit.

(C) *Duties of after-hours construction permittee.* A person to whom an after-hours construction permit is issued shall comply with the following requirements:

1. Complete a notice form, to be provided by the Building Official, and provide the completed notice form to the occupants of property located within 600 feet of the site of the after-hours construction activity prior to the commencement of the after-hours construction activity.
2. Conspicuously post a written notice of the after-hours construction activity on the site of the after-hours construction activity, and maintain the posting of the notice for the term of the after-hours construction permit. The notice shall identify:
  - (a) the name and telephone number of the property owner or the property owner's authorized agent; or
  - (b) the name and telephone number of the contractor or the contractor's authorized agent.
3. Comply with the conditions of the after-hours construction permit, including taking reasonable actions to minimize noise and disruption of the occupants of property located within 600 feet of the location stated in this permit.

(D) *Revocation.* At any time, the Building Official may revoke an after-hours construction permit if the Building Official determines that a permittee or a permittee's agents or employees are not acting in compliance with a condition of the permit, a provision of this Chapter, or a provision of any other applicable ordinance or law.

(E) *Effect on local noise regulations.* It is an affirmative defense to prosecution of a noise-related offense, including a violation of Section 6-6-13 of the City Code, that the noise was directly caused by the person's performance of after-hours construction activity in accordance with an after-hours construction permit and that

the person was taking reasonable actions to minimize noise and disruption of the occupants of property located within 600 feet of the location of the after-hours construction activity.

**4-13-4. Offense; affirmative defense.**

- (A) *Offense.* A person who violates a provision of this Chapter shall be guilty of a misdemeanor and fined in a sum not to exceed \$500.00. A person commits a separate and distinct offense for each separate violation of a provision of this Chapter.
- (B) *Culpable mental state not required.* Evidence of a culpable mental state is not required to prove a criminal offense under this Chapter. It is hereby declared that, for all offenses under this Chapter, the culpable mental state required by Section 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.
- (C) *Affirmative defense.* It is an affirmative defense to prosecution of an offense under this Chapter that the person was performing after-hours emergency construction activity.

**SECTION TWO.** The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

**SECTION THREE.** If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

**SECTION FOUR.** The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding five hundred dollars (\$500.00).

**SECTION FIVE.** This ordinance shall become effective on the 30th day after its final approval and adoption.

**SECTION SIX.** The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 11th day of February, A.D., 2025; and passed to second reading on motion of Council member Stretcher Burkes, seconded by Council member Norman, by the following vote:

Council members voting "AYE": Burkholder, Stretcher Burkes, Poole, Blong, Stubbs, Norman

Council members voting "NAY": None

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Ladd, seconded by Council member Norman, on the 25th day of February, A.D., 2025, at a regular meeting of the City Council:

Council members voting "AYE": Burkholder, Stretcher Burkes, Poole, Blong, Ladd, Norman

Council members voting "NAY": None

PASSED AND APPROVED THIS 25th day of February, A.D., 2025.

  
Lori Merritt Blong, Mayor

ATTEST:

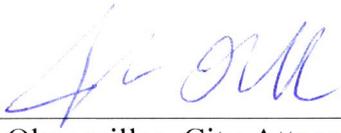
  
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT  
AND COMPLETENESS:

  
Jose Ortiz, Assistant City Manager

  
Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:



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John Ohnemiller, City Attorney





# City Council Meeting

**Item Number:** 23  
**Meeting Date:** February 11, 2025  
**To:** City Council / City Manager  
**From:** Jeff Pinkstaff,  
**Subject:** AN ORDINANCE AMENDING TITLE IV, "BUILDING REGULATIONS" OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, BY ADDING CHAPTER 13, "CONSTRUCTION WORK HOURS", SO AS TO ESTABLISH PERMITTED HOURS OF CONSTRUCTION ACTIVITY WITHIN 600 FEET OF AN OCCUPIED RESIDENTIAL USE OR A HOSPITAL AND PROVIDE FOR THE ISSUANCE OF AFTER-HOURS CONSTRUCTION PERMITS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM FINE OR PENALTY OF FIVE HUNDRED DOLLARS (\$500.00); ESTABLISHING AN EFFECTIVE DATE THAT SHALL BE 30 DAYS AFTER THE DATE OF ADOPTION OF THIS ORDINANCE; AND ORDERING PUBLICATION (DISTRICT: ALL) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

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**Purpose:**

This ordinance amendment establishes permitted hours for construction activity within 600 feet of an occupied residential property or hospital to minimize disruptions caused by noise, vibrations, and lighting during nighttime hours. It ensures that residents and patients are not unreasonably disturbed by late-night construction while still allowing flexibility for work beyond standard hours in extraordinary circumstances through an administrative permit process.

**Recommended City Council Action:**

Approve

**Fiscal Impact:**

None. An after-hours permit fee is not currently proposed.

**Strategic Priority:**

(Quality of Life and Place)

**Discussion:**

This ordinance responds to concerns from residents regarding construction noise, vibrations, and bright lights occurring during late-night and early-morning hours. Currently, there are no city-wide regulations limiting construction hours in proximity to homes and hospitals, leading to complaints about disruptions that impact rest and recovery.

Under the proposed ordinance, construction activity within **600 feet of an occupied residence or hospital will be permitted from 7:00 AM to 7:00 PM, Monday through Sunday**. Work outside these hours will require an administrative permit, which may be granted in extraordinary circumstances. Permit holders will also be required to notify affected properties in advance.

By establishing clear construction work hours while providing a pathway for necessary exceptions, this ordinance helps protect residents' quality of life while ensuring that critical development projects can continue when justified.



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City Manager's Office