ORDINANCE NO. 2011-______

AN ORDINANCE OF ST. JOHNS COUNTY, FLORIDA ESTABLISHING REGULATIONS FOR THE CONTROL OF NOISE ORIGINATING WITHIN THE UNINCORPORATED AREAS OF ST. JOHNS COUNTY, AND WHERE PROPERTY IN THE UNINCORPORATED AREA IS NEGATIVELY AFFECTED; PROVIDING TERMINOLOGY; PROHIBITING CERTAIN NOISES; EXEMPTING CERTAIN NOISES; LIMITING THE UNREASONABLE AND EXCESSIVE LEVELS OF NOISES, AND PLAINLY AUDIBLE NOISES IN CERTAIN CIRCUMSTANCES; PROHIBITING BREACH OF THE PEACE; PROVIDING PENALTIES AND REMEDIES; PROVIDING FOR NOISE PERMITS, AND GRANDFATHERING; PROVIDING FOR RELATED MATTERS; PROVIDING FOR REPEAL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of St. Johns County has determined a need to more effectively control and abate noise pollution in the unincorporated areas of the County; and

WHEREAS, effectively controlling noise pollution and infractions of the previously existing noise ordinance has been a recurring issue in St. Johns County; and

WHEREAS, protecting and encouraging business, agricultural and freedom of speech activities serves a legitimate governmental purpose of the Board of County Commissioners of St. Johns County while also protecting the public from excessive noise, particularly in residential areas; and

WHEREAS, the purpose of this Ordinance is to provide the public and enforcement officers with a clear delineation of enforcement procedures and with concise guidelines for regulating noise within the unincorporated areas of the County by providing specific prohibited noises, noise permits and grandfathering standards, and determining enforcement responsibilities; and

WHEREAS, the purpose of this Ordinance is to provide for an enforcement mechanism which will include a “plainly audible” standard of sound measurement for violating noises; and

WHEREAS, this Ordinance shall promote and encourage the citizens and businesses of St. Johns County to comply with the County noise regulations as this Ordinance provides more clarity on infractions, violations, and assessment of penalties.
NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA:

Section 1. Effect of Recitals.

The above recitals are incorporated into the body of this Ordinance and such Recitals are adopted as findings of fact.

Section 2. Recognition of Authority for Enacting this Ordinance.

It is the intent of the Board of County Commissioners of St. Johns County, Florida to utilize and rely on the language of the Miami-Dade, Florida Code §21-28(b) and upheld by DA Mortgage v. City of Miami Beach and Miami-Dade County, 486 F.3d 1254 (11th Cir. 2007). Further, as in the Miami-Dade Ordinance, it is the intent of this Ordinance to adopt a presumptive standard for determining whether a noise is unnecessary or excessive: if a sound device is plainly audible between the hours of 10:00pm until 6am on Sunday through Thursday, 11:00pm and 7:00am on Friday and Saturday, 100 feet or more away from its source (the building, yard, property or vehicle where the device is being operated), unless otherwise noted herein.

It is further the intent of the Board of County Commissioners of St. Johns County, Florida to address unnecessary and excessive noise which disturbs the peace, quiet, and comfort of neighboring inhabitants and to provide a civil remedy for breaches of the peace similar to those as set forth in Section 877.03, Florida Statutes, as amended from time to time.

Section 3. Jurisdiction and Enforcement.

This Ordinance shall be in effect within the unincorporated areas of St. Johns County, Florida and enforceable by the law enforcement agency which takes the complaint, including the St. Johns Sheriff’s Office, the Division of Animal Control, and Code Enforcement.

Section 4. Definitions.

A. “Plainly Audible” means sounds or noise which can be detected by the human ear without the benefit of a hearing aid.

B. “Sound” means something that can be heard; audible.

C. “Noise” means a sound that annoys or disturbs a human or which causes or tends to cause an adverse psychological or physiological effect on humans; loud or offensive disturbing sounds. This term shall be used synonymously with “sound.”

D. “Chamber” means the inside of a climate controlled structure with shared or common walls as with condominiums, townhouses, or apartments.

E. “Dwelling Unit” means a room or rooms connected together, constituting a separate, independent housekeeping establishment for a family, for owner occupancy or rental or
lease on a weekly, monthly, or longer basis, and physically separated from any other rooms or Dwelling Units which may be in the same Structure, and containing sleeping facilities and Cooking Facilities. (As defined in LDC Art. VII, Section 12.01.00, as amended from time to time).

Section 5. Breach of the Peace prohibited; unnecessary and excessive noises prohibited.

It shall be unlawful for any person to make, continue, or cause to be made or continued any unreasonably loud, excessive, unnecessary or unusual noise. The following acts, among others, are declared to be unreasonably loud, excessive, unnecessary or unusual noises in violation of this Ordinance, but this enumeration shall not be deemed to be exclusive, namely:

A. Civil Breach of the peace; disorderly conduct. — Whoever commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a violation of this Ordinance.

B. Horns, signaling devices, or similar equipment. The sounding of any horn or signaling device on any automobile, motorcycle, bus or other vehicle on any street or public place of the County, except as a danger warning; the creation by means of any such signaling device of any unreasonably loud or harsh sound; and the sounding of any such device for any unnecessary and unreasonable period of time.

C. Radios, televisions, phonographs, recording and playback devices, or sound reproduction equipment. The using, operating, or permitting to be played, used or operated any radio receiving set, television set, musical instrument, phonograph, recording and playback devices or any other similar devices reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighbors, or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle, chamber or dwelling unit in which such machine or device is operated and who are voluntary listeners thereto.

Additionally, the operation of any aforementioned devices between the hours of 10:00pm until 7am on Sunday through Thursday, 11:00pm and 7:00am on Friday and Saturday, in such manner as to be plainly audible inside the complainant’s chamber or dwelling unit or at a distance of one hundred (100) feet or more from source shall be prima facie evidence of a violation of this Ordinance.

D. Loudspeakers, Sound Amplifiers, and similar equipment on public streets. The use or operation on or upon the public streets, alleys and thoroughfares anywhere in this County for any purpose of any device known as a sound truck, loud speaker or sound amplifier or radio or any other instrument of any kind or
character which emits therefrom loud and raucous noises and is attached to and upon any vehicle operated or standing upon such streets or public places aforementioned which is plainly audible within the air controlled chamber or dwelling unit of neighboring inhabitants.

E. **Noises to attract attention.** The use of any drum, loudspeaker or other instrument or device for the purpose in whole or in part of attracting attention by creation of any unreasonably loud or unnecessary noise to any performance, show, sale, display or advertisement of merchandise; the shouting and crying of peddlers, hawkers, and vendors which disturbs the peace and quiet of the neighborhood.

F. **Shouting.** Any unreasonably loud, boisterous or raucous shouting that is plainly audible at a distance of one hundred (100) feet or more.

G. **Exhausts.** The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, or motor vehicle, except through a muffler or other device which will effectively prevent unreasonably loud or explosive noises therefrom.

H. **Defect in vehicle or load.** The use of any automobile, motorcycle, jet ski, water bike, recreational vehicle, dirt bike or motor vehicle so out of repair, so loaded or in such manner as to create unreasonably loud or unnecessary grating, grinding, rattling or other noise which is plainly audible within the air controlled chamber or dwelling unit of neighboring inhabitants.

I. **Motor vehicles.** Noises from motor vehicles as regulated by §316.272 F.S. and §316.293, F.S.

J. **Animals.** The owning, harboring, possessing or keeping of any animal or fowl which creates excessive and unnecessary noise which is plainly audible across the property line of the owner which is habitual and/or frequent, lasting 30 minutes or more while the animal is unprovoked, shall be prima facie evidence of a violation of this Ordinance. For purposes of this section, a citation may be issued when two (2) or more complaining witnesses who reside in two different chambers or dwelling unit(s) complete affidavits alleging the disturbance of the peace. A citation may also be issued when an enforcement officer witnesses the violation. This provision shall not apply to licensed and permitted kennels, public zoos or private animal attractions operated for profit to which the public has general admission.

K. **Schools, courts, hospitals.** The creation of any excessive or unreasonably loud noise within 100 feet of any school, institution of learning, or court while the same are in use, or adjacent to any hospital, which unreasonably interferes with the workings of such institutions, or which disturbs or unduly annoys the patients in the hospital, provided conspicuous signs are displayed in such streets indicating that said institutions are located on the street.
L. **Domestic Power tools and landscaping equipment.** Between the hours of 8:00 p.m. until 7:00 a.m. on Sunday through Thursday, 8:00 p.m. and 7:00 a.m. Friday and Saturday it shall be unlawful to operate a noise-producing domestic power tool or similar tool which is used to maintain the property or used at a residence, so that excessive and unnecessary noise travels across any residential real property line. All such equipment shall be properly muffled and maintained in working order so as not to create excessive and unnecessary noise.

M. **Construction and Industrial Noise.** Commercial, building, construction, road maintenance, utility, solid waste collection, industrial noise or similar noises are permitted after 7am daily until 7pm so long as it is not unnecessarily loud or excessive, so as to affect the health, safety or welfare of the neighboring inhabitants within 100 feet from the source of the noise. Construction and Industrial equipment must be in good repair and utilize noise baffling methods. These types of noises shall be further governed by existing Planned Unit Development Agreements (PUD), planning permits or other legally binding agreements.

**Section 6. Exceptions.**

The following uses and activities shall be exempt from noise level regulations as herein described:

A. Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency. All noises from official public service vehicles or from public service activities, including but not limited to; Solid Waste Collection, Utility Maintenance, Road and Bridges construction or repair. Private Contractors’ vehicles and activities which are doing public service business with St. Johns County or other official local governments shall also be exempt. Nothing herein shall be deemed to change any franchise agreement or contract.

B. Noises of safety signals, warning devices, and emergency pressure relief valves, when utilized for their intended use. This exception shall not apply to safety signals or warning devices for any unnecessary use or unreasonable period of time. Specifically, this exception shall not apply to fixed building or vehicular burglar alarms when sounded for false alarms or sounded for a period in excess of 15 minutes.

C. Noises resulting from emergency work necessary to prevent injury to persons or significant damage to property.

D. Non-amplified crowd noises resulting from activities such as those planned by student, governmental, or community groups, parades, or racing/sport events.
E. Noises consistent with cultural, historical, or traditional observances, weddings, holidays, and ceremonies, provided that a temporary noise permit is obtained pursuant to this Ordinance in Section 8 Temporary Permits. Any other noise resulting from activities of a temporary duration permitted by law and for which a temporary noise permit has been issued by St. Johns County provided the activities shall be in accordance with the conditions and limitations stated on the permit.

F. All noises coming from the normal operations of railroad trains or aircraft, not including model aircraft and aircraft ground testing operations between 8:00 A.M. – 8:00 P.M. on Monday through Saturday and only on Sunday from 12 noon to 5:00 P.M. by special authorization of the Manufacturing Director, Grumman St. Augustine.

G. Noises from all equipment tests required by law, so long as they are conducted between the hours of 8:00 a.m. and 5:00 p.m., and the duration of the test is the minimum recommended by the manufacturer of the equipment. This provision also applies to the testing/exercising of emergency generators.

H. All commercial agricultural activities, so long as all internal combustion engines are properly muffled. Processing of agricultural products is only exempt if performed on farmlands.

I. Gun ranges shall be consistent with §823.16, F.S., as amended from time to time.

J. Church bells, clocks or bell tower chimes shall be exempt.

Section 7. Grandfathering; Vesting; Priority.

Noises or sound levels specifically governed by existing Planned Unit Development Agreements (PUD), planning permits or legal settlements shall prevail if in conflict with this Ordinance. The accused violator of this Ordinance shall have an affirmative duty to provide proof of vesting, priority or grandfathering. The following shall be grandfathered so long as the noise producing activity remains the same and does not stop for more than 180 consecutive days:

A. Veranda Partners, Ltd. (i.e. Pusser’s Caribbean Grill); Property ID #
B. Hydro Aluminum

Section 8. Temporary Noise Permits.

The County Administrator [or designee] or the Sheriff [or designee] is authorized to issue a temporary noise permit to allow noise normally prohibited when such noise is produced by a temporary use or special event. Reasonable conditions necessary to minimize any adverse effect upon the health, safety or welfare of the community, may be included in
the temporary noise permit. Such temporary noise permits may include necessary construction activity and special events, based on a finding that there are no reasonable alternatives and the activity or event has obtained all other required permits. Temporary Noise Permits issued pursuant to such authorization shall not exceed three (3) days, including weekends and/or National Holidays. Violation of a temporary noise permit shall result in revocation and penalties as set out in this Ordinance in Section 10. Material misrepresentation of facts in order to obtain a temporary noise permit shall result in immediate revocation.

Section 9. Enforcement.

This Ordinance is enforceable by the law enforcement agency which takes the complaint, including the St. Johns County Sheriff, Division of Animal Control and Code Enforcement.

Section 10. Penalties.

A. Any person or persons, firm or corporation, or any agent thereof who violates any of the provisions of this Ordinance may upon conviction be guilty of a non-criminal violation punishable as provided for under §125.69 and Chapter 162, Florida Statutes, as amended from time to time. Violations of this Ordinance shall be processed in accordance with F.S. Ch. 162, including, but not limited to, appearance before the St. Johns County Special Magistrate or County Judge.

B. Any violation of this Ordinance which results in breaches of the peace or is a flagrant disregard of provisions of this Ordinance may be determined to have committed a civil violation and may incur a fine not to exceed Five Hundred Dollars ($500). Such violations may also incur the actual cost of damages. Additionally citations shall be subject to the following penalties:

(1) First citation $ 53.00
(2) Second citation $118.00
(3) Third citation $268.00
(4) Fourth citation $500.00

NOTE: A fourth citation or more shall result in a mandatory appearance in County Court and may be determined to be a second degree misdemeanor violation of §877.03, Florida Statutes, and may incur a fine not to exceed Five Hundred Dollars ($500).
C. Grace Period.

At the discretion of the Special Magistrate or County Judge, a violator who is found guilty of violating this Ordinance may be given a grace period for no more than 30 days to come into compliance. Fines may be waived after compliance with the prescribed period.

D. Continuing Violations.

Each day a violation continues subsequent to the issuance of a citation shall constitute a separate violation for which a separate subsequent citation may be issued and an additional penalty may be applied.

E. Restoration.

(a) Any violation of this Ordinance which results in or causes harm to property, habitat or protected vegetation and restoration of the property, habitat or protected vegetation to the original condition prior to the violation can be achieved within five (5) years shall be subject to restoration and replacement requirements as determined by the County Administrator [or designee].

(b) Irreparable or Irreversible Violation shall be a violation of this Ordinance which cannot be restored to the original condition prior to the violation within five (5) years of when the violation occurred. The restoration and replacement requirements shall be determined by the County Administrator and incur a fine not to exceed five thousand (5,000) dollars in accordance with the provisions of Chapter 162, Florida Statutes.

Section 11. Conflicts.

This Ordinance is in addition to the Laws of Florida and shall not limit or reduce said laws or penalties. In the event this Code conflicts with any other applicable regulation or law on any given provision, the more restrictive shall apply.

Section 12. Severability and repeal.

A. If any provision or portion of a provision of this Ordinance is held to be unconstitutional, preempted by Federal or State law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of this Ordinance shall not be invalidated.

B. All previous Noise Ordinances, Amendments or parts of ordinances regulating noise are hereby repealed and replaced by this Ordinance. To that end, the following Ordinances are repealed and replaced by this Ordinance: Ord. 1988-37, Ord. 1988-56, Ord. 1989-32, Ord. 1989-62, Ord. 1996-57, and Ord. 1998-19.
Section 13. Clerical Errors and Omissions.

Notwithstanding the language set out herein, any clerical errors, omissions or scrivener’s errors may be amended without further review and approval by the St. Johns County Board of County Commission.

Section 14. Effective Date.

This Ordinance shall take effect upon receipt of official acknowledgement by the office of the Department of State to the Clerk of the Board of County Commissioners that same has been filed.

PASSED AND ENACTED by the Board of County Commissioners of St. Johns County, Florida, this _____ day of __________________, 2011.

ATTEST: Cheryl Strickland, Clerk

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: ________________________________
   Deputy Clerk

By: ________________________________
   J. Ken Bryan, Chairman

Effective Date: _____________________
Rendition Date: _____________________