

CITY OF MIAMI BEACH
Office of the City Manager
Letter to Commission No. 189-2004



To: Mayor David Dermer and
Members of the City Commission

Date: July 22, 2004

From: Jorge M. Gonzalez
City Manager

A handwritten signature in black ink, appearing to read "Jorge", written over the printed name.

Subject: **DRAFT NOISE ORDINANCE**

Attached please find a working draft of amendments to the City's current Noise Ordinance.

The working draft is being circulated for comment with residents and the business community at this point in time.

A key section in the draft is the addition of specified penalties in Section 46-159. A new schedule of fines is included in the draft Ordinance. This section will most likely be the focus for discussion with residents and the business community and subsequently with the members of the City Commission.

Before this item is presented to Commission for any form of consideration, the Administration will make an effort to create a consensus document addressing both residents and business community needs or in the worst case, consensus among as many items as possible, thereby narrowing possible areas of disagreement to a manageable scope.

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Attachment

C: Bob Middaugh, Assistant City Manager

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ARTICLE IV. NOISE

Sec. 46-151. 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:

Amplified sound means sound augmented by any electronic means that increases the sound level or volume.

City manager or his designee means the city manager or one of his assistants or a department or division head of the city designated by the city manager.

Code inspector means an authorized employee or agent of the city whose duty it is to ensure code compliance, including but not limited to inspectors of the city's code compliance department and police officers.

Complainant means any owner, lessee, manager or person with a legal interest in a receiving property who reports being disturbed by sound heard inside of a residence or place of business upon the receiving property and not originating therefrom.

Emergency work means any work performed for the purpose of remedying conditions that create an imminent peril to life, health or property.

~~*Plainly audible* means the sound can be clearly heard by a person of normal sensibilities using only unaided auditory senses. Plainly audible shall refer to a sound heard at a volume level above that of normal conversation and shall not include sounds which are just barely audible. With respect to music the detection of a rhythmic base reverberating type sound, beat or cadence shall be deemed plainly audible.~~

~~*Property line* means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by a person from that owned by another person, but not including intrabuilding real property divisions.~~

Receiving property means any residence or place of business into which sound, not originating therefrom, is traveling.

Residence means any occupied room or rooms connected together containing sleeping facilities, including single- and multiple-family homes, townhomes, apartments, condominium units, and hotel and motel rooms.

~~*Sound source* means the place from which sound emanates, including without limitation a speaker, loudspeaker, or other sound producing instrument or person.~~

Special master means a hearing officer appointed pursuant to chapter 30 of this Code.

~~*Uninvited noise* means noise not originating on the receiving property.~~

~~*Unreasonably loud* means noise that is plainly audible inside of a receiving property across a property line.~~

(Ord. No. 95-2982, § 2(24-1), 3-22-95)

Cross references: Definitions generally, § 1-2.

Sec. 46-152. ~~Unreasonably loud noise prohibited.~~ Adoption by reference. Noises; unnecessary and excessive prohibited.

~~At all times, it shall be unlawful for any person to cause or permit to originate from the real property he controls any sound that crosses a real property line at a volume that is unreasonably loud.~~

Section 21-28 of the Code of Miami-Dade County, entitled “Noises; unnecessary and excessive prohibited,” is recognized as being in force in the City and is hereby adopted by reference as if fully set forth herein, as that code may be amended from time to time.

(Ord. No. 95-2982, § 2(24-2), 3-22-95)

Sec. 46-153. Responsibility for compliance.

For purposes of sections 46-152 ~~through 46-155~~ and 46-153 any person owning or having responsibility for management of a business premises, however temporarily, any performer or disc jockey producing sound upon any business premises, any person playing music, any person having control of volume knobs or levels, and the business as named on the occupational license, shall be jointly and severally liable for compliance with this article and shall be responsible for any violations of this article.

(Ord. No. 95-2982, § 2(24-3), 3-22-95)

Sec. 46-154. Noise level in specific area. Repealed.

~~(a) — *Purpose.* The purpose of these regulations is to allow for an area of the city where the ambience contributes to the enjoyment by residents and visitors of uses that feature the serving of food and beverages accompanied by outdoor live and pre-recorded musical entertainment.~~

~~(b) — *Boundaries.* The area for which these regulations apply shall be located between 900 and 1090 Ocean Drive on Miami Beach. The legal description for this area is as follows:~~

~~Lots 1 through 8, inclusive, block 14; and lots 1 through 8, inclusive, block 15, Ocean Beach Addition No. 2, as recorded in plat book 2, page 56, public records of the county.~~

~~(c) — *Limitation on noise volume.*~~

~~(1) — For purposes of enforcement of this article, the following definition of "unreasonably loud" shall apply for all noises originating within the area as described in subsection (b) of this section:~~

~~Uninvited noise shall be deemed unreasonably loud if it is plainly audible inside a residential receiving property or part thereof at a distance greater than 50 feet away from the property line of the sound source or is plainly audible inside a place of business or part thereof at a distance greater than 100 feet away from the property line of the sound source. For purposes of enforcement of this section, measurements of distance from a sound source to a receiving property shall be measured in a straight line from the property line of the sound source to the residence or place of business which is the receiving property. The measurement will begin at that point on the property line of the sound source nearest to the receiving property.~~

~~(2) — All procedures for enforcement of violations of the noise limitations in subsection (c)(1) of this section and for appeals of notices of violations issued by code inspectors shall be as set forth in this article.~~

~~(d) — *No variances granted.* No variances shall be granted from the permissible volume limitations set forth in subsection (c) of this section.~~

~~(e) — *Applicability of zoning provisions.* The regulations set forth in this section shall be supplementary to all other provisions, and zoning regulations shall continue to apply within the area.~~

(Ord. No. 89-2665, § 12C, 10-1-89)

Sec. 46-155. ~~Additional sound limitations for public property.~~ Repealed.

~~No person shall, on any public street or sidewalk, beach or park use, operate or play any radio, phonograph, stereo set, tape or CD player, television, sound amplifier, or other electronic audio device that produces or reproduces amplified sound, at a level that is plainly audible at a distance of more than ten feet from the sound source.~~

(Ord. No. 95-2982, § 2(24-4), 3-22-95)

Sec. 46-156. Temporary permits.

(a) The city manager or his designee is authorized to issue a temporary permit to allow noise prohibited by sections 46-152 and ~~46-155~~ 46-153 when produced by a temporary use or activity that does not significantly endanger the health, safety or welfare of the neighborhood. The city manager or his designee may prescribe any reasonable conditions necessary to minimize any adverse effect upon the community. A permit granted under this article shall contain all conditions upon which the permit has been granted, including the period of time for which the permit has been granted. Such relief may be granted in the following situations:

- (1) *Code compliance in progress.* When an applicant is utilizing best efforts to comply with the noise restrictions in this article, but additional time is required for the applicant to modify his activity to comply and no reasonable alternative is available to the applicant. Such permits may be granted for a period of time not to exceed ten days.
- (2) *Construction.* When construction activities pursuant to a valid building permit cannot be carried out in a manner which would comply with sections 46-152 and 46-155; provided that all equipment shall be operated in accordance with manufacturer's specifications, shall be in good repair and shall utilize all noise baffling methods as specified by the manufacturer, and further provided that such activities shall occur only as follows:
 - a. Between the hours of 7:30 a.m. and 6:30 p.m. and between the hours of 7:30 a.m. and 7:30 p.m. during daylight savings time, on any day in areas zoned as CCC, GU, I-1, MR, CPS-1, CPS-2, CPS-3, CPS-4, RO, WD-1, WD-2, GC, HD, MXE, CD-1, CD-2 and CD-3.
 - b. Between the hours of 8:00 a.m. and 6:00 p.m. on weekdays and 10:00 a.m. and 4:00 p.m. on Saturdays in areas zoned as RM-1, RM-2, RM-3, RM-PRD, RPS-1, RPS-2, RPS-3, RPS-4, RMPS-1, RS-1, RS-2, RS-3, RS-4, TH and in any exclusively residential zoning district not otherwise specified in this subsection. No construction shall be permitted on Sundays or on national holidays.

Notwithstanding the provisions set forth in subsections (a)(2)a and b of this section, the ~~building official~~ City Manager or his designee may authorize any construction activity at a particular site within a zoning district set forth in subsection (a)(2)a of this section earlier than 7:30 a.m. Under emergency circumstances only, the building official may authorize any necessary construction activities earlier than 8:00 a.m. and/or later than 4:00 p.m. on any day within a zoning district set forth in subsection (a)(2)b of this section. The work authorized by the building official pursuant to this subsection may be conditioned upon notice to surrounding property owners and tenants. Such permits may be granted for a period of time not to exceed three consecutive days.

(3) *Special events and film and print permits.* When the applicant seeks to hold a special event or film and print production, or other activity, and has met all of the city's requirements for obtaining such permit as set forth in applicable regulations, resolutions or ordinances and the activity or special event cannot be performed or held in a manner that would comply with sections 46-152 and ~~46-155~~ 46-153. Except for special events and film and print productions, such permits may be issued for a period of time not to exceed three days. In lieu of a separate permit issued hereunder, the special event or film and print permit may include the authorization and conditions contemplated hereunder. See section 12-1, for film and print production permits, or section 12-5, for special events.

(b) Failure to comply with any condition of a temporary permit issued pursuant to this section shall constitute a violation and shall result in enforcement procedures and penalties as set forth in sections 46-159 and 46-160.

(Ord. No. 95-2982, § 2(24-5), 3-22-95; Ord. No. 97-3085, § 1, 7-2-97; Ord. No. 2001-3302, § 2, 4-18-01; Ord. No. 2001-3303, § 2, 4-18-01; Ord. No. 2003-3412, § 1, 6-11-03)

Sec. 46-157. Exemptions.

The following uses and activities shall be exempt from the requirements of sections 46-152 and ~~46-155~~ 46-153 and from the enforcement procedures in this article:

- (1) Cries for emergency assistance and warning calls.
- (2) Radios, sirens, horns and bells and other sounds created by police, fire and other emergency response vehicles.
- (3) Parades, fireworks displays, special events and other activities for which a permit has been obtained from the city, pursuant to section 46-156, within such hours and in accordance with such restrictions as may be imposed as conditions for the issuance of the permit.
- (4) Activities on or in municipal and school athletic facilities and on or in publicly owned property and facilities, when such activities have been authorized by the public authority owning the properties or facilities or their agents; except where such publicly owned properties are under private operation or use. ~~pursuant to a lease or concession agreement.~~
- (5) Fire alarms and burglar alarms, bells and chimes of churches or other religious institutions; however false burglary alarms shall be subject to enforcement procedures and penalties as set forth in article II of chapter 42.
- (6) Locomotives and other railroad equipment and aircraft, to the extent that city regulation is preempted by federal law.
- (7) Noises resulting from emergency work.
- (8) Any noise resulting from activities of a temporary duration permitted pursuant to section 46-156.
- (9) Noise generated by motor vehicles as defined in F.S. § 320.01 when operated and equipped in accordance with requirements set forth in the Florida Statutes.
- (10) Noise resulting from the operation of vessels when operated in compliance with the decibel limitations in F.S. § 327.65. However, noise exceeding the limitations set forth in F.S. § 327.65 shall be subject to enforcement and penalties as set forth in F.S. ch. 327.
- ~~(11) Noises emanating from the unamplified conversations of persons on the public streets and sidewalks.~~

(Ord. No. 95-2982, § 2(24-6), 3-22-95)

Sec. 46-158. Enforcement by code inspectors; notice of violation.

If a code inspector receives a complaint from a complainant regarding a violation of this article, he shall investigate the complaint and determine whether the violation exists. If the code inspector then observes a violation of this article, the inspector shall inform the violator that he must immediately cease the violation and will be subject to additional penalties if the violation continues and issue a notice of violation to the violator as provided in chapter 30 of this Code. The notice shall inform the violator of the:

- (1) Name of the violator.
- (2) Date and time of violation.
- (3) Nature of the violation.
- (4) Amount of fine for which the violator may be liable.
- (5) Instructions and due date for paying the fine.
- (6) Notice that the violation may be appealed by requesting an administrative hearing within ten days after service of the notice of violation, that failure to do so shall constitute an admission of the violation and waiver of the right to a hearing, and that unpaid fines will result in the imposition of liens which may be foreclosed by the city.

The notice shall also inform the violator that repeat violations of this article will result in the imposition of larger fines and may also result in revocation of occupational license and/or certificate of use and/or injunctive proceedings as provided by law.

(Ord. No. 95-2982, § 2(24-7), 3-22-95)

Sec. 46-159. Civil fines for violation; appeals.

- (a) The following civil fines shall be imposed for violations of this chapter:
- (1) First offense, \$100.00 fine.
 - (2) Second offense ~~and each offense thereafter~~ (within ~~one year~~ twelve months of the first offense), \$500.00 fine.
 - (3) Third offense (within twelve months of the first offense), \$1,000.00 fine.
 - (4) Fourth offense (within twelve months of the first offense), \$5,000.00 fine.
 - (5) Fifth offense (within twelve months of the first offense), \$10,000.00 fine.
 - (6) Sixth offense (within twelve months of the first offense), one weekend (Friday evening through Monday morning) occupational license suspension and a \$15,000.00 fine.
 - (7) Seventh offense (within twelve months of the first offense), one weekend (Friday evening through following Friday morning) occupational license suspension and a \$20,000.00 fine.

For purposes of this section, "offense" shall mean a notice of violation that has not been contested timely or a finding of violation by a special master. A person may receive a separate notice of violation once every hour if a violation has occurred at any time within that period. Each notice of violation shall constitute a separate offense for which a separate fine may be imposed. License suspensions pursuant to this section shall be imposed by order of the Special Master finding that an offense warranting suspension has occurred.

- (b) A violator who has been served with a notice of violation shall elect either to:
- (1) Pay the civil fine in the manner indicated on the notice; or
 - (2) Request an administrative hearing before a special master to appeal the decision of the code inspector that resulted in the issuance of the notice of violation.
- (c) The procedures for appeal of the notice of violation shall be as set forth in sections 102-384 and 102-385. A courtesy mail notice shall be provided to the complainant of any hearing regarding the notice of violation, and the complainant may testify at such hearings. Failure to give such notice shall not be a cause for continuance or cancellation of any scheduled hearing of the matter.
- (d) If the named violator after notice fails to pay the civil fine or fails to timely request an administrative hearing before a special master, the special master shall be informed of such failure by report from the code inspector. Failure of the named violator to appeal the

decision of the code inspector within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the special master. A waiver of the right to an administrative hearing shall be treated as an admission of the violation and penalties ~~may~~ shall be assessed accordingly.

- (e) Any party aggrieved by the decision of a special master may appeal that decision to a court of competent jurisdiction as provided in F.S. § 162.11 section 30-77 of this Code.
- (f) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil fines. A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other real or personal property owned by the violator and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After two months from the filing of any such lien that remains unpaid, the city may foreclose or otherwise execute on the lien.
- (g) As an alternative or additional means of enforcement, the city may institute proceedings to revoke or suspend an occupational license and/or certificate of use or seek injunctive relief as set forth in section 46-158. Furthermore, in cases of ~~recurring~~ habitual violations, the ~~code inspector~~ City Manager or his designee may issue a ~~citation~~ an administrative complaint for prosecution before the special master suspension or revocation of an occupational license and certificate of use as provided in this chapter wherein Section 102-383, upon a finding of violation by the ~~special master~~ independent hearing officer, an ~~per diem fine~~ occupational license suspension or revocation shall ~~may~~ be imposed. A violation shall be considered ~~recurring~~ habitual when a person or entity has received ~~three~~ more than seven notices of violation within a period of ~~one~~ twelve months.
- (h) In addition to the above, a violation of this section shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.
- (i) Nothing herein shall restrict the powers and authority granted to the various boards and committees of the city including the imposition of conditions and sanctions not specifically enumerated in this article.

(Ord. No. 95-2982, § 2(24-8), 3-22-95)

Sec. 46-160. Nuisance.

Any violation of this article shall constitute a nuisance. The city attorney may bring suit on behalf of the city, or any affected citizen may bring suit in his name, against the person or persons causing or maintaining the violation, and against the owner/agent of the building or property on which the violation exists. Relief may be granted according to the terms and conditions of F.S. § 60.05, relating to abatement of nuisances, or pursuant to section 46-159. In any such action, the city or affected citizen, if the prevailing party, shall be awarded costs, including reasonable attorney's fees.

(Ord. No. 95-2982, § 2(24-9), 3-22-95)

Sec. 46-161. Motor vehicle alarms.

- (a) Definition. The following term shall have the following meaning for purposes of this section: "alarm system" shall mean a motor vehicle siren or horn alarm system contained in or appurtenant to a motor vehicle, designed to activate and sound in the event of a break-in or attempted break-in of the vehicle.
- (b) It shall be unlawful for any motor vehicle equipped with an alarm system to activate and emit a siren or horn noise, audible at a distance of 100 feet intermittently or continuously within a period in excess of 30 minutes between the hours of 11:00 p.m. and 7:00 a.m. Any person who has custody of any such offending motor vehicle shall be deemed in violation of this section.
- (c) A violation of this section on the public streets or areas within the city is hereby declared a public nuisance which may be abated by the removal of such vehicle upon authorization of a law enforcement officer. Prior to removing such vehicle, the law enforcement officer shall afford the owner or custodian of such vehicle the opportunity to disconnect or deactivate the alarm system at the scene. Otherwise, the vehicle shall be removed to an authorized facility. The law enforcement agency shall ascertain the name and address of the registered owner of such vehicle and provide written notice by certified mail, return receipt requested, within 24 hours of such removal, the reason(s) for the removal, and the place where such vehicle has been removed. The fees assessed for the removal of the vehicle may be appealed by filing a complaint in the county court and posting with the court a cash or surety bond or security equal to the amount for the removal and/or storage of the vehicle to ensure the payment of such in the event the owner or custodian of the vehicle does not prevail.
- (d) A violation of this section on private property shall cause the person who owns or has custody of the offending vehicle to be fined \$50.00 Any duly designated law enforcement officer and/or code enforcement officer is authorized and empowered to enter without force upon private property in order to detect and issue a citation or notice of violation to and upon the owner or custodian of the offending motor vehicle. The citation or notice of violation may be appealed in accordance with the procedures set forth in chapter 30 of this Code.
- (e) It shall not be a violation of this section if it is determined by the law enforcement officer and/or code enforcement officer that the siren or horn noise has been triggered by the unauthorized opening of the hood, truck or door(s) of the vehicle, by the breaking or attempted breaking of a window or by lightning, thunderstorms, or severe weather conditions.

(Ord. No. 98-3157, § 1, 12-2-98)