



AGENDA ITEM COVER PAGE

File ID: #16718

Ordinance

Sponsored by: Christine King, Commissioner

AN ORDINANCE BY THE MIAMI CITY COMMISSION AMENDING CHAPTER 36/SECTION 36-4 OF THE CODE OF THE CITY OF MIAMI, FLORIDA, AS AMENDED, TITLED "NOISE/OPERATION OF RADIOS, PHONOGRAPHS, OR OTHER SOUND-MAKING DEVICES; BANDS, ORCHESTRAS, AND MUSICIANS – GENERALLY," AND CHAPTER 36/SECTION 36-5 OF THE CITY CODE, TITLED "NOISE/SAME – HOURS OF OPERATION OF JUKEBOXES, RADIOS, ETC.; EXEMPTION FOR EVENTS ON CITY-OWNED PROPERTY; RELAXATION," TO CREATE A PILOT PROGRAM FOR THE NRD-1 WYNWOOD BID REMOVING DECIBEL READINGS FOR NOISE VIOLATIONS AND CREATING ALTERNATE HOURS FOR RESTRICTIVE TIMES AND ALTERNATE DISTANCES FOR SOUND; CONTAINING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.



City of Miami

Legislation

Ordinance

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Final Action Date:

AN ORDINANCE BY THE MIAMI CITY COMMISSION AMENDING CHAPTER 36/SECTION 36-4 OF THE CODE OF THE CITY OF MIAMI, FLORIDA, AS AMENDED, TITLED "NOISE/OPERATION OF RADIOS, PHONOGRAPHS, OR OTHER SOUND-MAKING DEVICES; BANDS, ORCHESTRAS, AND MUSICIANS – GENERALLY," AND CHAPTER 36/SECTION 36-5 OF THE CITY CODE, TITLED "NOISE/SAME – HOURS OF OPERATION OF JUKEBOXES, RADIOS, ETC.; EXEMPTION FOR EVENTS ON CITY-OWNED PROPERTY; RELAXATION," TO CREATE A PILOT PROGRAM FOR THE NRD-1 WYNWOOD BID REMOVING DECIBEL READINGS FOR NOISE VIOLATIONS AND CREATING ALTERNATE HOURS FOR RESTRICTIVE TIMES AND ALTERNATE DISTANCES FOR SOUND; CONTAINING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 36-4 of the City Code enforces the City of Miami's ("City") 24-hour, 100 foot, plainly audible noise standard; and

WHEREAS, Section 36-5 of the City Code places a stricter standard on noise emanation from properties during the hours of 11:00 PM to 7:00 AM; and

WHEREAS, the Pilot Program provided for alternate time restrictions and greater distance of measurement plainly audible observations; and

WHEREAS, the NRD-1 is a vibrant and unique neighborhood which has gone from mainly industrial with some residential to housing large scale restaurant and entertainment area with high rise residential living; and

WHEREAS, the City Commission believes that finding an alternate time and schedule for areas that already lean heavily into City's entertainment, both indoor and outdoor, but do not about historically residentially zoned areas would be greatly beneficial for City residents, businesses and visitors;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. The recitals and findings contained in the Preamble to this Ordinance are adopted by reference and incorporated as if fully set forth in this Section.

Section 2. Chapter 36 of the City Code is amended in the following particulars:¹

"CHAPTER 36

NOISE

¹ Words and/or figures stricken through shall be deleted. Underscored words and/or figures shall be added. The remaining provisions are now in effect and remain unchanged. Asterisks indicate omitted and unchanged material.

* * * *

Chapter 36 Noise

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Sec. 36-4. Operation of radios, phonographs, or other sound-making devices; bands, orchestras, and musicians—Generally; exemption.

- (a) It shall be unlawful for any person owning, occupying or having charge of any building or premises or any part thereof, in the city, at any time to cause or suffer or allow any loud, unnecessary, excessive or unusual noises in the operation of any radio, phonograph or other mechanical sound-making device or instrument, or reproducing device or instrument, or in the playing of any band, orchestra, musician or group of musicians, or in the use of any device to amplify the music of any band, orchestra, musician or group of musicians, where the noise or music is plainly audible at a distance of 100 feet from the building, structure, vehicle or premises in which or from which it is produced. The fact that the noise or music is plainly audible at a distance of 100 feet from the vehicle or premises from which it originates constitutes prima facie evidence of a violation of this chapter.
- (b) It shall be unlawful for any person owning, occupying, or having charge of any business, including but not limited to an entertainment establishment, alcohol service establishment, food service establishment, etc., or any part thereof, that shares a property line with any property that has a residential use as defined by Article 1 of the Miami 21 Code to cause or suffer to cause the playing or operating of any such noise or such similar music of the following, which is not an exhaustive list: music, music boxes, jukeboxes, radios, musical instruments, any other musical devices; phonograph or other mechanical sound-making device or instrument; reproducing device or instrument; the playing of any band, orchestra, musician, or group of musicians; or the use of any device to amplify the music of any band, orchestra, musician, or group of musicians on or about the premises in any of its outdoor spaces between the hours of 10:00 p.m. and 8:00 a.m. the following day. The playing or operating of any noise or such similar music, including but not limited to music, music boxes, jukeboxes, radios, musical instruments, any other musical devices; phonograph or other mechanical sound-making device or instrument; reproducing device or instrument; the playing of any band, orchestra, musician, or group of musicians; or the use of any device to amplify the music of any band, orchestra, musician, or group of musicians between the hours of 10:00 p.m. and 8:00 a.m. in such manner shall be prima facie evidence of a violation of this section.
- (c) All of the above and foregoing shall not apply to city-sponsored activities and events held in or upon any city-owned facility or city-owned property. The city commission may also declare an exemption from the prohibitions contained in this subsection and declare them inapplicable on special occasions by resolution for private property.
- (d) Any establishment operating a sound making device shall be exempted from subsection (b) if said establishment had an approval prior to the adoption of this section; is operating completely within a structure; is located within the Downtown Development Authority, Omni Redevelopment Area, Coconut Grove Business Improvement District, or the Wynwood Neighborhood Revitalization District; abuts an area zoned T-6 or above; has a sound making device located on the primary frontage; is located and operating on the outside of a structure on or above the fifth floor of a structure; or is located on a property zoned D1, D2, or T-6-24 or above.
- (e) Pilot program for the NRD-1.

- (1) The NRD-1 District as defined in section 4-5 of the City Code is exempt from subsection (a) of this section throughout the duration of the herein created pilot program. The NRD-1 is generally bounded by Interstate 95 ("I-95") on the west, Northwest 29th Street on the north including parcels fronting Northwest 29th Street on the north between I-95 and Northwest 5th Avenue and between Northwest 2nd Avenue and North Miami Avenue, the FEC Corridor on the east, and Northwest 20th Street between North Miami Avenue and Northwest 1st Place, and Northwest 22nd Street between Northwest 1st Place and I-95 on the south.
- (2) Within the NRD-1 District, it shall be unlawful for any person owning, occupying, or having charge of any building or premises or any part thereof at any time to cause or suffer or allow any loud, unnecessary, excessive, or unusual noises in the operation of any radio, phonograph, or other mechanical sound-making device, instrument, or reproducing device; in the playing of any band, orchestra, musician, or group of musicians; or in the use of any device to amplify the music of any band, orchestra, musician, or group of musicians where the noise or music: is plainly audible at a distance of 150 feet from the building, structure, vehicle, or premises in which, or from which, it is produced. The fact that the noise or music is plainly audible at a distance of 150 feet from the vehicle or premises from which it originates constitutes prima facie evidence of a violation of this Chapter. A violation of this Subsection shall be subject to prosecution as follows:
 - a. ~~Exceeds 80 dB(A) at a distance of greater than 25 feet from the property line of the property on which or from which it is produced;~~
 - b. ~~The bass level exceeds 70 dB(C) when measured from within an enclosed structure with all windows, doors and other openings closed;~~
~~or~~
 - c. ~~Exceeds 65 dB(A) when measured from within an enclosed structure with all windows, doors, and other openings closed.~~
 - d. ~~The city manager shall have the authority to decrease the allowable decibel levels by up to 10dB(A) and/or 10dB(C) during the pilot program based upon the recommendation of the Wynwood Business Improvement District and after 30 days' notice has been posted and sent via certified US Mail to all affected business.~~
 - e. ~~The city commission may also declare an exemption from the prohibitions contained in this subsection and declare them inapplicable on special occasions by resolution for private property.~~
- (3) ~~The fact that the noise or music emanating from the property on which or from which it is produced exceeds the dB(A) sound level referenced in subsection (e)(2)a., b. and c. above constitutes prima facie evidence the violation has occurred. Any violation of this subsection is punishable as follows:~~
 - (a) ~~For a first offense, a fine of \$250.00 warning shall be issued;~~
 - (b) ~~For a second offense, a fine of \$50250.00;~~

(c)- ~~For a third and subsequent violations a fine of \$500.00 or violations may also be ~~punished~~ enforced pursuant to section 2-817, et seq. of the City Code with a fine in an amount of up to \$1,000.00 per diem for a first offense and a fine in an amount of up to \$5,000.00 per diem for a repeat violator to be assessed by the code enforcement board. The code enforcement board may also find the violation to be irreparable or irreversible in nature and assess a fine in an amount of up to \$15,000.00 for each violation in accordance with subsection 2-817(e) of the City Code.~~

(3) The City Commission may also declare an exemption from the prohibitions contained in this Subsection and declare them inapplicable on special occasions by resolution for private property.

Violations shall be enforced against the property owner and/or violator under the provisions of chapter 2, article X of the City Code and any other remedies as provided by law including, but not limited to, revocation of certificate of use and/or business tax receipt, and actions for injunctive relief in the circuit court.

(4) ~~The pilot program noise standards shall sunset one January 26, 2024 year from the date of passage. The City Commission may extend for one year by Resolution.~~

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Sec. 36-5. ~~Same—~~Hours of operation of jukeboxes, radios, etc.; exemption for events on city-owned property; relaxation.

(a) It shall be unlawful for any person owning, occupying or having charge of any business establishment, or any part thereof, in the city, to cause or suffer to cause the playing or operating of music boxes, jukeboxes, radios, musical instruments or any other musical devices on or about the premises between the hours of 11:00 p.m. and 7:00 a.m. the following day, unless such music boxes, jukeboxes, radios, musical instruments and other devices are played or operated in a closed building and the sound is not audible from outside the building so as to disturb the quiet, comfort or repose of persons in any dwelling, hotel or other type of residence. Upon a second conviction of violation of this section, the city manager or designee, may at their discretion, revoke any business tax receipt issued under chapter 31 to the business.

(b) All of the above and foregoing shall not apply to city-sponsored activities and events held in or upon any city-owned facility or city-owned property. This exemption shall not apply to any tenant of a city-owned facility or city-owned property.

(c) The city commission may relax the time restrictions contained in paragraphs (a) or declare them inapplicable on special occasions by resolution.

(d) Pilot program for the NRD-1.

(1) The NRD-1 District as defined in section 4-5 of the City Code is exempt from subsection (a) of this section through the duration of the pilot program. The NRD-1 boundaries are generally described as bounded by I-95 on the west, Northwest 29th Street on the north including parcels fronting Northwest 29th Street on the north between I-95 and Northwest 5th Avenue and between Northwest 2nd Avenue and North Miami Avenue, the FEC Corridor on the east, and Northwest 20th Street between North Miami Avenue and Northwest 1st

Place and Northwest 22nd Street between Northwest 1st Place and I-95 on the south.

- (2) Within the NRD-1 District, it shall be unlawful for any person owning, occupying, or having charge of any business establishment or any part thereof to cause or suffer to cause the playing or operating of music boxes, jukeboxes, radios, musical instruments, or any other musical devices on or about the premises between the hours of 11:00 p.m. to 7:00 a.m., Monday through Wednesday, 3:00 a.m. and 9:00 a.m., Thursday through Saturday, and 12:01 a.m. to 7:00 a.m., Sunday, unless such music boxes, jukeboxes, radios, musical instruments, and other devices are played or operated in a closed building and the sound is not plainly audible from outside the building so as to disturb the quiet, comfort, or repose of persons in any dwelling, hotel, or other type of residence. ~~Any violation of this subsection is punishable by a fine of \$250.00 for a first offense, \$500.00 for each offense thereafter, and shall be enforced against the property owner under the provisions of chapter 2, article X of the City Code and any other remedies as provided by law including, but not limited to, an action for injunctive relief in the circuit court and may subject the business and/or property owner to loss of their certificate of use and/or business tax receipt. A violation of this Subsection shall be subject to prosecution as follows:~~
- (a) For a first offense, a warning shall be issued;
 - (b) For a second offense, a fine of \$250.00;
 - (c) For a third and subsequent violations a fine of \$500.00 or violations may also be enforced pursuant to section 2-817, et seq. of the City Code with a fine in an amount of up to \$1,000.00 per diem for a first offense and a fine in an amount of up to \$5,000.00 per diem for a repeat violator to be assessed by the Code Enforcement Board. The Code Enforcement Board may also find the violation to be irreparable or irreversible in nature and assess a fine in an amount of up to \$15,000.00 for each violation in accordance with Subsection 2-817 of the City Code.
 - (d) The City may also enforce this Subsection pursuant to any other remedies as provided by law including, but not limited to, revocation of certificate of use and/or business tax receipt, and actions for injunctive relief in the circuit court.
- (3) For venues with open-air areas, Subsection (d)(2) shall only be applicable for those venues who have Code Compliance Department approved sound mitigation devices installed so as to lessen sound emanations. Should such venues receive more than three (3) violations for which they are found guilty after appeal or fail to appeal, this pilot program shall not be applicable to such venue.
- (34) The pilot program noise standards shall sunset one year from the effective date of this ordinance January 26, 2024.
- (45) The city commission may also declare an exemption from the prohibitions contained in this subsection and declare them inapplicable on special occasions by resolution for private property.

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Section 3. If any section, part of a section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

Section 4. This Ordinance shall become effective immediately after final reading and adoption thereof.²

APPROVED AS TO FORM AND CORRECTNESS:


George K. Wysocki III, City Attorney 10/1/2024

² This Ordinance shall become effective as specified herein unless vetoed by the Mayor within ten (10) days from the date it was passed and adopted. If the Mayor vetoes this Ordinance, it shall become effective immediately upon override of the veto by the City Commission or upon the effective date stated herein, whichever is later.