

**REQUEST FOR CITY COUNCIL CONSIDERATION**

Meeting Date: September 20, 2021

Agenda Item: 7A	Prepared by: Chris Noury, City Attorney
Agenda Section: New Business: Ordinance. First Reading	Date: August 24, 2021
Subject: An ordinance to repeal Sections 12-70 through Section 12-78 under Article V titled Noise and to replace the repealed language with Sections 12-70, 12-71, 12-72, 12-73, 12-74, 12-75, 12-76, 12-77 and 12-78; to include certain decibel levels at which noise can be maintained, but cannot exceed and to place decibel level standards on obscene, profane and/or vulgar lyrics played within the City	Division: Legal

**Background:**

City elected officials and staff have received numerous complaints regarding what many consider to be obscene and vulgar lyrics that were being broadcast from a business located on Main Street. Several of the persons complaining about the lyrics indicated the obscene lyrics could be heard as they were walking on the public sidewalks of Main Street accompanied by their underage children and/or grandchildren (copies of some of the written complaints are attached). While the business responsible for playing the lyrics was doing so for its customers who presumably enjoy and consented to hearing the lyrics located at the business, people walking within proximity to the business *did not* consent to being exposed to obscene and/or vulgar lyrics.

The City of North Myrtle Beach has a long history as a vacation destination for families as well as fostering a family friendly environment for its residents. Subjecting non-consenting adults and children to obscene, vulgar and/or profane lyrics as they go about their business while on Main Street (or any other area of the City) is inconsistent with the City’s identity as a family friendly and family oriented location.

The City also recognizes that musical lyrics that many may consider obscene, vulgar and/or profane may also be enjoyed by others and possibly be protected by the First Amendment of the U.S. Constitution. To strike a balance between the City’s governmental interest in protecting children and non-consenting adults from being subjected to obscene, vulgar and/or profane lyrics while also allowing those persons who wish to listen to the same; the City has amended its noise ordinance that will impose a maximum decibel level, according to the time of day, at which obscene, vulgar and/or profane lyrics can be played.

The proposed ordinance provides as follows regarding *obscene, profane or vulgar language*:

“The use of sound equipment to broadcast obscene, profane or vulgar language from any commercial property, private property, public right-of-way or city property in excess of 30 dB(A) from 7:01 a.m. to 10:59 p.m. and 50 dB(A) from 11:00 p.m. to 7:00 a.m. as measured from the boundary with the adjacent neighboring commercial property, private property, public right-of-way or city property is prohibited.”

The proposed ordinance also contains parameters concerning decibel levels for sustained or repetitive noises that do not fall into the above referenced category as follows:

“It shall be unlawful for any person to cause or permit any sustained or repetitive noise, regardless of source, beyond the property line, in excess of:

- (1) 60 dB(A) from 11:00 p.m. to 7:00 a.m. or
- (2) 80 dB(A) from 7:01 a.m. to 10:59 p.m.”

**Recommended Action:**

Approve the proposed ordinance on first reading

Reviewed by City Manager

Reviewed by City Attorney

Council Action:

Motion By \_\_\_\_\_ 2<sup>nd</sup> By \_\_\_\_\_ To \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF NORTH MYRTLE BEACH TO REPEAL SECTIONS 12-70 THROUGH SECTION 12-78 OF ARTICLE V OF THE NOISE ORDINANCE AND TO REPLACE THE REPEALED SECTIONS OF THE NOISE ORDINANCE AS FOLLOWS:**

**WHEREAS**, members of Council and city staff received numerous complaints regarding the broadcasting of obscene, lewd or sexually explicit music that could be heard by children accompanying their parents and grandparents on the streets in downtown;

**WHEREAS**, concerned citizens attended Council's meetings to record their complaints regarding the same;

**WHEREAS**, the city owes a duty to protect its citizens from being disturbed by loud music in their work and leisure time; and

**WHEREAS**, the city owes a duty to children and their caretakers, residents and visitors, to prevent their exposure to obscene or sexually explicit words or lyrics.

**NOW, THEREFORE, the following amendments to the ordinances of the City of North Myrtle Beach are hereby enacted:**

**Section 12-70 Declaration of Policy**

It is hereby declared to be the public policy of the city to reduce the ambient sound level in the city, as so to preserve, protect and promote the public health, safety and welfare, and the peace and quiet of the residents and visitors of the city, prevent injury to human, plant and animal life and property, foster the convenience and comfort of its inhabitants and visitors, and facilitate the enjoyment of the natural attractions of the city. It is the public policy of the city that every person is entitled to ambient sound levels that are not detrimental to life, health and enjoyment of his or her property. It is hereby declared that the making, creation or maintenance of excessive or unreasonable sound within the city affects and is a menace to public health, comfort, convenience, safety, welfare and the prosperity of the people of the city. It is hereby declared to be the public policy of the city to protect children from being exposed to broadcast obscene, profane or vulgar words and lyrics while accompanying their caretakers on the streets, in public places, in homes or in businesses. The provisions and prohibitions hereinafter contained and enacted are for the above-mentioned purpose.

**Section 12-71 Definitions**

For purposes of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning:

**Commercial Property** means real property that is owned primarily for business use or to produce income, but not for residential purposes.

**Decibel dB(A)** means the unit for describing the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure (20 micronewtons per square meter).

**Motor Vehicle** means any vehicle as defined by the South Carolina Code of Laws, including, but not limited to passenger vehicles; common carriers of passengers; motorcycles; mopeds; truck tractors; and farm tractors.

**Noise** means any sound or combination of sounds which, because of its volume or quality, tends to disturb persons of normal sensitivity or to interfere with normal human activity.

Noise disturbance means any unreasonably loud or raucous sound or noise which endangers or injures the health or safety of humans or animals; endangers or injures the personal or real property; or disturbs a person of normal sensitivity.

Obscene means description of sexual conduct that is objectionable or offensive to accepted standards of decency which the average person, applying North Myrtle Beach community standards would find, taken as a whole, appeals to prurient interests or material which depicts or describes, in a patently offensive way, sexual conduct or genitalia specifically defined by S.C. Code Ann. §16-15-305, which, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Outdoor Venue means a commercial property that is not fully enclosed by permanent solid walls and a roof, from which sound equipment is used to amplify sound.

Person includes an individual, partnership, corporation, and unincorporated association but does not include the city or other governmental unit.

Private Property means real property that is owned by a person and used as a residence or house of worship.

Profane means to treat with irreverence or contempt, crude, filthy, dirty, smutty, or indecent.

Sound Equipment means a loud speaker, public address system, television device, amplification system, musical instrument, radio, phonograph, jukebox, CD player, or any other sound producing or transmitting device.

Unreasonable Noise means any noise that exceeds the dB(A) level during the time periods set forth in section 12-72, using the measurement criteria set forth in section 12-73.

Vulgar means making explicit and offensive reference to sex, male genitalia, female genitalia or bodily functions.

#### Section 12-72 Maximum Permissible Sound Levels

The maximum permissible sound emitted from commercial property, private property, public right-of-way or from city property when measured in accordance with section 12-73 shall not be in excess of 60 dB(A) between the hours of 11:00 p.m. and 7:00 a.m., or in excess of 80 dB(A) at all other hours.

#### Section 12-73 Method of Sound Measurement

Sound shall be measured with a Type 1 or Type 2 calibrated sound level meter utilizing the A-weighting scale and the slow meter response as specified by the American National Standards Institute (A.N.S.I. S1.4-1984/85A). Measurements recorded shall be taken so as to provide a proper representation of the sound being measured. The microphone of the meter shall be positioned so as not to create any unnatural enhancement or diminution of the measured sound. A windscreen for the microphone shall be used. Measurements of sound generated shall be taken from the property line of the neighboring commercial property, public property or private property where the sound is received towards the source of the sound.

#### Section 12-74 General Prohibition

It shall be unlawful for any person to make, continue or cause to be continued any noise disturbance within the limits of the city.

#### Section 12-75 Specific Prohibition

(a) It shall be unlawful for any person in the city to maintain and operate in any commercial property, private property or on any other premises in the city any sound equipment of any kind whereby the

sound therefrom is cast directly upon the public streets, strand, beach or alleyway in such a manner as to create unreasonable noise.

- (b) Except as required by law, no person shall activate or cause to be activated within the city any horns or other sound producing device, except as alarm signals in case of fire, collision or other emergency.
- (c) It shall be unlawful for any person, group, organization or association to use any noise-making devices in any public street, beach or alleyway in the city unless permitted under section 16-13.
- (d) It shall be unlawful for any person in the operation of a motor vehicle to cause or allow any noise disturbance in the operation or use of such motor vehicle upon any of the streets of the city or for any person to race the engine of any motor vehicle, whether such vehicle is in motion or not, except when necessary to do so in the course of repairing, adjusting or testing the same.
- (e) It shall be unlawful for any person to own, possess or harbor any animal which frequently or for continued duration howls, barks, or makes any other noise continuously or incessantly for a period of five (5) minutes or barks intermittently for ten (10) minutes or more to the disturbance of any person, particularly between 11:00 p.m. and 7:00 a.m. and regardless of whether the animal is physically situated in or upon private property; provided however, that an animal shall not be deemed a "barking animal" if, at the time the animal is barking or making any other noise, a person is trespassing or threatening to trespass upon property in or upon which the animal is situated.
- (f) It shall be unlawful to operate or permit the operation of tools or equipment used in construction, drilling or any demolition work between the hours of 10:00 p.m. and 7:00 a.m., except for emergency work of public service utilities, or by a temporary exception granted by the city manager for extraordinary circumstances relating to a construction activity.
- (g) It shall be unlawful for any person to cause or permit any sustained or repetitive noise, regardless of source, beyond the property line, in excess of:
  - (1) 60 dB(A) from 11:00 p.m. to 7:00 a.m. or
  - (2) 80 dB(A) from 7:01 a.m. to 10:59 p.m.
- (h) The use of sound equipment to broadcast obscene, profane or vulgar language from any commercial property, private property, public right-of-way or city property in excess of 30 dB(A) from 7:01 a.m. to 10:59 p.m. and 50 dB(A) from 11:00 p.m. to 7:00 a.m. as measured from the boundary with the adjacent neighboring commercial property, private property, public right-of-way or city property is prohibited.
- (i) The operation of pile driving equipment is prohibited at any time on Sundays and before the hour of 8:00 a.m. or after the hour of 6:00 p.m., Monday through Saturday.

#### Section 12-76 Exemptions

The following uses and activities shall be exempt from this article:

- (1) Lawnmowers, agricultural equipment and hobby equipment, when operated between the hours of 7:00 a.m. and 10:00 p.m.
- (2) Noises of safety signals, warning devices and emergency pressure relief valves.
- (3) Noises resulting from any authorized emergency vehicles, when responding to an emergency call or acting in time of emergency.
- (4) Noises resulting from emergency work.
- (5) Noise from school bells, church bells or chimes.
- (6) Sounds generated by natural phenomena.
- (7) City animal shelter.
- (8) Sanitation collection vehicles that empty solid waste from dumpsters or compactors.
- (9) Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit has been granted by the city, or activities sponsored or cosponsored by the city
- (10) Noises from the operation of tools or equipment used in construction, drilling or any demolition work between the hours of 7:00 a.m. and 10:00 p.m.

Section 12-77 Violations

Violation of this article is a misdemeanor and is punishable as provided in section 1-6 of the Code of Ordinances of the City of North Myrtle Beach.

Section 12-78 Severability Clause

If any provision or any section of this article shall be held to be invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this article, nor the context in which such provision or section so held invalid may appear, except to the extent that a provision or section may be inseparably connected in meaning and effect with the provision or section to which such holding shall directly apply so as to render it meaningless.

**NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA:**

**Section 1.** Section 12-70 through and including section 12-78 of the existing Noise Ordinance is hereby repealed.

**Section 2.** Section 12-70 through and including section 12-78 as indicated in the ordinance attached above are hereby adopted for inclusion in Article V, Noise, of Chapter 12 of the Code of Ordinances.

**Section 3.** The Ordinance shall become effective upon the date of passage.

**DONE, RATIFIED AND PASSED, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

ATTEST:

\_\_\_\_\_  
Mayor Marilyn Hatley

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

FIRST READING: 9.20.2021

SECOND READING: \_\_\_\_\_

REVIEWED:

\_\_\_\_\_  
City Manager

ORDINANCE: 21-33