

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION**

MICHAEL MOSHOURES,

Plaintiff,

v.

CITY OF NORTH MYRTLE BEACH;

MARILYN HATLEY, in her official capacity
as Mayor of the City of North Myrtle
Beach;

TOMMY DENNIS, in his official capacity as
Chief of the North Myrtle Beach
Department of Public Safety;

Defendants.

Case No. _____

**Complaint for Declaratory and
Injunctive Relief**

PRELIMINARY STATEMENT

1. The City of North Myrtle Beach has made it a crime to play “crude,” “smutty,” or “indecent” music at a volume barely perceptible to the human ear. In so doing, the City has trampled on the firmly rooted freedoms of speech and expression preserved by our federal constitution.

2. Because this ordinance is a presumptively unconstitutional content-based abridgment of free speech, criminalizes vast swaths of protected speech, and is so vague that it promotes discriminatory enforcement, it must be struck down.

PARTIES

Plaintiffs

3. MICHAEL MOSHOURES is an individual and is the owner of Sky Bar, a night life venue located at 214 Main Street in the City of North Myrtle Beach.

Defendants

4. The City of NORTH MYRTLE BEACH is a municipality in Horry County, South Carolina. It is governed by City Council, which consists of the Mayor and six Council members.

5. MARILYN HATLEY is the Mayor of North Myrtle Beach and the head of the North Myrtle Beach City Council. Defendant Hatley—in concert with North Myrtle Beach City Council—proposes, votes upon, and passes laws in the city of North Myrtle Beach.

6. TOMMY DENNIS is the Chief of the North Myrtle Beach Public Safety Department. In that capacity, Defendant Dennis is responsible for enforcement of the North Myrtle Beach municipal code, including the ordinance challenged herein.

JURISDICTION AND VENUE

7. This civil rights action is authorized and instituted under 42 U.S.C. § 1983, which permits citizens to seek relief from unconstitutional state action.

8. This Court has jurisdiction over Plaintiff’s federal constitutional claims under 28 U.S.C. § 1331.

9. Defendant’s acts or omissions giving rise to the claims alleged herein occurred in the District of South Carolina. Venue is therefore proper under 28 U.S.C. § 1391(b).

10. Venue is proper in the Florence division under Local Rule 3.01 because the plaintiff and defendants reside in this division and a substantial portion of the events or omissions giving rise to the claim occurred in this division.

FACTS

The Noise Ordinance

11. On October 4, 2021, the City of North Myrtle Beach passed Ordinance 21-33, which amended the City’s Noise Ordinance to prohibit new conduct, including the playing of profane, vulgar, or obscene music at a volume louder than 30 decibels.

12. The new ordinance was enacted in response to complaints by citizens that certain

commercial establishments (bars) were playing loud and profanity-laced music in a way that was clearly audible from the street and sidewalk.

13. Under the newly amended noise ordinance, amplified sounds that contain “obscene, profane or vulgar language” are subject to far stricter noise limits than other sounds.

14. Specifically, “obscene, profane or vulgar” sounds can be played no louder than thirty (30) decibels between the hours of 7 a.m. and 11 p.m.. EX A.

15. Thirty decibels is roughly equivalent to a “quiet rural area,” “leaves rustling,” or a whisper.

16. Under the same ordinance, non-profane sounds can be broadcast during the same time of day at up to eighty (80) decibels, which corresponds to the sound of heavy traffic or a lawn mower.

17. Because decibels are a logarithmic unit for measuring sound, 80 decibels is actually *thirty-two times* louder than 30 decibels.¹

18. Under Ordinance 21-33, the following definitions are provided for “obscene, profane or vulgar” sounds:

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.

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

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

¹ <https://hearinglosshelp.com/blog/converting-decibels-to-sound-intensities/>

19. Violation of Ordinance 21-33 is a misdemeanor offense, punishable by up to a five-hundred-dollar (\$500) fine and up to thirty (30) days in jail.

Overbreadth

34. The new Noise Ordinance was designed to cover musical expression. According to City Council documents, the Ordinance was passed in response to citizen complaints about “obscene and vulgar lyrics that were being broadcast from a business located on Main Steet.” EX B.

35. By prohibiting offensive music, even played at a very low volume, North Myrtle Beach necessarily criminalized substantial amounts of protected speech. The Supreme Court has explained that “music is one of the oldest forms of human expression” and has held that “the Constitution prohibits *any* . . . attempts” to “ *censor musical compositions to serve the needs of the state.*” *Ward v. Rock Against Racism*, 491 U.S. 781, 790 (1989) (emphasis added).

36. Although “obscene” speech has been upheld as a category unprotected by the First Amendment, music cannot meet the legal definition for obscenity. *See Luke Recs., Inc. v. Navarro*, 960 F.2d 134, 135 (11th Cir. 1992) (“[W]e tend to agree with appellants' contention that because music possesses inherent artistic value, no work of music alone may be declared obscene[.]”).

Vagueness

37. Many of the words and phrases contained in Ordinance 21-33 are inescapably vague and lack sufficient definiteness to provide fair notice of proscribed conduct.

38. “Profane,” for example, is defined by reference to a set of other words—“crude, filthy, dirty, smutty, or indecent”—that do little to clarify the type of conduct or expression prohibited by the Ordinance.

39. These vagueness concerns are particularly problematic because they place the task of determining whether conduct is criminal—versus merely unpopular—entirely within the discretion of law enforcement.

40. The concern of discriminatory enforcement is heightened here because data show that law enforcement in North Myrtle Beach is already prone to discriminatory policing.

41. Public contact reports collected by the South Carolina Department of Public Safety show that Black individuals comprise over 22% of the uncited law enforcement stops executed by the North Myrtle Beach Department of Public Safety, despite African Americans representing only 1.5% of the city's population.²

42. Similar disparities exist in data reported by the Horry County Sheriff's Office, where Black individuals represent 46.53% of the uncited traffic stops and only 12.9% of the population.³

Plaintiff's Injuries

43. Plaintiff Michael Moshoures owns Sky Bar, a night club in North Myrtle Beach that plays rap, hip hop, and top-40 music.

44. Patrons of the Sky Bar show up each night expecting to hear music from these genres, which often include profane and sexually explicit lyrics.

45. Citizen complaints about the type of music emanating from Sky Bar provoked City Council to amend the Noise Ordinance to create stricter rules for profanity, vulgarity, and obscenity.

46. Sky Bar was ticketed multiple times under North Myrtle Beach's prior noise ordinance.

47. Under the new ordinance, Plaintiff has received several warnings from law enforcement. On more than one of those occasions, the police entered Sky Bar "like a SWAT team," force the DJ to stop the music, and turn the lights on. Each time this occurs, Sky Bar loses customers and revenue.

² Data is collected by law under S.C. Code § 55-5-6560 and published at <https://apps.scdps.sc.gov/publiccontactreports/PublicContact-012.aspx>; *also see* <https://www.census.gov/quickfacts/fact/table/northmyrtlebeachcitysouthcarolina,horrycountysouthcarolina/PST045219>

³ *Id.*; <https://www.census.gov/quickfacts/horrycountysouthcarolina>

48. Sky Bar has also lost customers and revenue because the bar’s clientele does not like the “clean” versions of popular songs, which Plaintiff feels he must play to avoid liability under the ordinance.

49. It is also difficult for DJs to acquire the “clean” versions of songs. That difficulty, along with the frequent warnings, has put a strain on the DJs who work at Sky Bar. In at least one case, a DJ has decreased the frequency he is willing to work at Sky Bar as a result.

50. At present, Mr. Moshoures’s First Amendment right to play music for his patrons is under attack. He must either acquiesce to an unconstitutional city ordinance or risk criminal prosecution under the North Myrtle Beach City Code.

CLAIMS FOR RELIEF

First Cause of Action

42 U.S.C. § 1983

Overbroad in Violation of the First Amendment

51. Plaintiff repeats and realleges the allegations in previous paragraphs of this Complaint as if fully alleged herein.

52. A statute is facially overbroad if “a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *United States v. Stevens*, 559 U.S. 460, 473 (2010) (internal marks omitted).

53. Here, Ordinance 21-33 criminalizes any sound louder than a whisper (30db) that contains profane, vulgar, or obscene language.

54. In doing so, the Ordinance broadly and vaguely defines the terms ‘profane,’ ‘vulgar,’ and ‘obscene’ and thereby criminalizes any speech that a passerby might find offensive. But the First Amendment plainly protects offensive speech, *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”), and indecent expression, *Sable Commc’ns of California, Inc. v. F.C.C.*, 492 U.S. 115, 126 (1989) (“expression which is indecent but not obscene is protected

by the First Amendment”), and crude behavior, *IOTA XI Chapter of Sigma Chi Fraternity v. George Mason Univ.*, 993 F.2d 386, 390 (4th Cir. 1993) (“Even crude street skits come within the First Amendment’s reach.”).

55. Finally, the plain intent of Ordinance 21-33 is to prohibit individuals and businesses from playing unappealing music at a volume that is (barely) audible from Main Street North Myrtle Beach.

56. This is doubly problematic. First, music is a form of protected expression that cannot meet any of the exceptions to free speech recognized by the Supreme Court. *See Ward v. Rock Against Racism*, 491 U.S. 781, 790 (1989) (“Music, as a form of expression and communication, is protected under the First Amendment.”). And second, the streets and sidewalks of Main Street are a traditional public forum where First Amendment rights are “at their apex.” *Steinburg v. Chesterfield Cnty., Planning Comm’n*, 527 F.3d 377, 384 (4th Cir. 2008).

57. In short, it is difficult to imagine a *lawful* application of Ordinance 21-33. That being true, the law criminalizes a substantial amount of protected speech and expression and must therefore be struck down as overbroad.

58. On his first cause of action, Plaintiff seeks declaratory and injunctive relief under 42 U.S.C. § 1983.

59. Plaintiff also seeks all reasonable costs, expenses, and attorneys’ fees available under 42 U.S.C. § 1988.

Second Cause of Action

42 U.S.C. § 1983

Content-Based Speech Restriction Under the First Amendment

34. Plaintiff repeats and realleges the allegations in previous paragraphs of this Complaint as if fully alleged herein.

35. Defendants are state actors responsible for the enforcement of the challenged Ordinance, which violates Plaintiffs’ rights secured by the First Amendment.

36. Ordinance 21-33 is a presumptively unconstitutional content-based law because it applies different noise restrictions based on the content of the speech involved.

37. Specifically, the ordinance permits playing “decent” music at up to 80 decibels but restricts “indecent” music to a volume of only 30 decibels.

38. To justify treating certain speech differently on the basis of its content, the City must show that the restriction is narrowly tailored to a compelling governmental interest.

39. Ordinance 21-33 fails both prongs. First, North Myrtle Beach cannot articulate a compelling interest in reducing socially disfavored speech on Main Street. And second, even if there were a compelling interest at stake, the Ordinance’s unreasonable decibel limits transgress the “narrowly tailored” requirement under the First Amendment.

40. On his second cause of action, Plaintiff seeks declaratory and injunctive relief under 42 U.S.C. § 1983.

41. Plaintiff also seeks all reasonable costs, expenses, and attorneys’ fees available under 42 U.S.C. § 1988.

Third Cause of Action
42 U.S.C. § 1983
Void for Vagueness Under the Fourteenth Amendment

42. Plaintiff repeats and realleges the allegations in previous paragraphs of this Complaint as if fully alleged herein.

43. It is a basic principle of due process that laws must give a “person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

44. Where speech and expression are implicated, “[t]he general test of vagueness applies with particular force.” *Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982).

45. Here, Ordinance 21-33 is squarely directed at speech and expression, and its definitions of ‘obscene,’ ‘profane,’ and ‘vulgar,’ do not provide sufficient notice of what type of

speech falls under the law's harsh noise limits.

46. Because these terms are poorly and vaguely defined, the Ordinance improperly equips law enforcement with wide discretion to determine what speech is criminal.

47. On his third cause of action, Plaintiff seeks declaratory and injunctive relief under 42 U.S.C. § 1983.

48. Plaintiff also seeks all reasonable costs, expenses, and attorneys' fees available under 42 U.S.C. § 1988.

PRAYER FOR RELIEF

WHEREFORE, the PLAINTIFFS respectfully request this Court to:

1. Declare that Ordinance 21-33 is overbroad in violation of the First Amendment because it criminalizes a substantial amount of protected speech and expression;
2. Declare that Ordinance 21-33 is an unreasonable content-based restriction on speech and expression and thus violates the First Amendment;
3. Declare that Ordinance 21-33 is unconstitutionally vague in violation of the Fourteenth Amendment;
4. Enjoin any and all enforcement of Ordinance 21-33 by Defendants and their agents;
5. Award Plaintiffs' attorneys' fees, costs and expenses incurred in this matter under 42 U.S.C. § 1988; and
6. Provide any other such further relief as the Court deems just and equitable.

Date: July 5, 2022

Signature Block on Following Page

AMERICAN CIVIL LIBERTIES UNION OF SOUTH CAROLINA

/s/ Meredith McPhail

Meredith McPhail (Fed. Bar # 13500)
Allen Chaney (Fed. Bar #13181)
American Civil Liberties Union
Foundation of South Carolina
P.O. Box 1668
Columbia, South Carolina 29202
Telephone: (843) 282-7953
E: achaney@aclusc.org; mmcphail@aclusc.org

TURNER PADGET GRAHAM & LANEY, P.A.

/s/ R. Wayne Byrd

R. Wayne Byrd, #1642
P.O. Box 2116
Myrtle Beach, SC 29578
T: (843) 213-5500
F: (843) 213-5620
E: wbyrd@turnerpadget.com

Virginia P. Bozeman, #13476
P.O. Box 1473
Columbia, South Carolina 29202
T: 803-227-4372
F: 803-400-1560
vbozeman@turnerpadget.com

Attorneys for the Plaintiff

Sec. 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.

(Ord. No. 21-33, § 2, 10-4-21)

Sec. 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 twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure (twenty (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.

(Ord. No. 21-33, § 2, 10-4-21)

Sec. 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 sixty (60) dB(A) between the hours of 11:00 p.m. and 7:00 a.m., or in excess of eighty (80) dB(A) at all other hours.

(Ord. No. 21-33, § 2, 10-4-21)

Sec. 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.

(Ord. No. 21-33, § 2, 10-4-21)

Sec. 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.

(Ord. No. 21-33, § 2, 10-4-21)

Sec. 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) Sixty (60) dB(A) from 11:00 p.m. to 7:00 a.m. or
 - (2) Eighty (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 thirty (30) dB(A) from 7:01 a.m. to 10:59 p.m. and fifty (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.

(Ord. No. 21-33, § 2, 10-4-21)

Sec. 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.

(Ord. No. 21-33, § 2, 10-4-21)

Sec. 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.

(Ord. No. 21-33, § 2, 10-4-21)

Sec. 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.

(Ord. No. 21-33, § 2, 10-4-21)

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: October 4, 2021

Agenda Item: 6G	Prepared by: Chris Noury, City Attorney
Agenda Section: Unfinished Business: Ordinance. Second Reading	Date: September 29, 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 through 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.
- (2) 80 dB(A) from 7:01 a.m. to 10:59 p.m.”

Recommended Action:

Approve the proposed ordinance on second reading

Reviewed by City Manager		Reviewed by City Attorney
--------------------------	--	---------------------------

Council Action:

Motion By _____ 2nd 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: 10.4.2021

REVIEWED:

City Manager

ORDINANCE: 21-33