

R5 R AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE CITY CODE, ENTITLED "ENVIRONMENT," BY AMENDING ARTICLE IV, ENTITLED "NOISE," BY AMENDING SECTION 46-152, ENTITLED "NOISES; UNNECESSARY AND EXCESSIVE PROHIBITED," TO REMOVE FROM THE PROHIBITION OF THE USE OF LOUDSPEAKER TYPE DEVICES ATTACHED TO AND UPON VEHICLES A CARVE-OUT PERMITTING THE LEGITIMATE USE OF SUCH DEVICES IN POLITICAL CAMPAIGNS, CONSISTENT WITH FLORIDA SUPREME COURT PRECEDENT; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

Applicable Area:

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: City Attorney Ricardo J. Dopico

DATE: April 23, 2025 10:30 a.m. Second Reading Public Hearing

TITLE: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE CITY CODE, ENTITLED "ENVIRONMENT," BY AMENDING ARTICLE IV, ENTITLED "NOISE," BY AMENDING SECTION 46-152, ENTITLED "NOISES; UNNECESSARY AND EXCESSIVE PROHIBITED," TO REMOVE FROM THE PROHIBITION OF THE USE OF LOUDSPEAKER TYPE DEVICES ATTACHED TO AND UPON VEHICLES A CARVE-OUT PERMITTING THE LEGITIMATE USE OF SUCH DEVICES IN POLITICAL CAMPAIGNS, CONSISTENT WITH FLORIDA SUPREME COURT PRECEDENT; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

BACKGROUND/HISTORY

ANALYSIS

The proposed ordinance is a minor cleanup of the City's noise ordinance to remove an exception from a ban on speakers only for speakers associated with a political campaign, which the Florida Supreme Court has held to be unconstitutional. It is presented on first reading by the sponsor, Mayor Steven Meiner, at the request of the City Attorney's Office.

In 2011, the City Commission adopted Ordinance 2011-3737, which incorporated into Section 46-152 of the City Code the language of the noise standards found in Section 21-28 of the Miami-Dade County Code ("County Code").

Section 46-152(j) of the City Code currently provides that "[t]he use or operation on or upon the public streets, alleys and thoroughfares anywhere in this city for any purpose of any device known as a sound truck, loud speaker or sound amplifier or radio or any other instrument of any kind or character which emits therefrom loud and raucous noises and is attached to and upon any vehicle operated or standing upon such streets or public places aforementioned. It is provided, however, that this subsection is not intended to be construed in a manner that would interfere with the legitimate use of the foregoing loudspeaker type devices in political campaigns".

The language of Section 46-152(j) of the City Code is identical to the language of Section 21-28(4)(j) of the County Code.

In 1990, the Florida Legislature enacted Section 316.3045 of the Florida Statutes, which provided, as a general prohibition, that it is "unlawful for any person operating or occupying a motor vehicle on a street or highway to operate or amplify the sound produced by a radio, tape player, or other

mechanical soundmaking device or instrument from within the motor vehicle so that the sound is: (a) Plainly audible at a distance of 100 feet or more from the motor vehicle; or (b) Is louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools, or hospitals”.

The Florida Legislature’s enactment of Section 316.3045 of the Florida Statutes also provided a carve-out to the foregoing general prohibition, whereby the general prohibition would “not apply to motor vehicles used for business or political purposes, which in the normal course of conducting such business use soundmaking devices”.

In 2012, the Supreme Court of Florida decided *State v. Catalano*, 104 So. 3d 1069 (Fla. 2012), which held that the content-based carve-out in Section 316.3045 of the Florida Statutes for business or political messaging was “an unreasonable restriction on First Amendment rights” and “unconstitutionally overbroad because it restricts the freedom of expression in a manner more intrusive than necessary”.

In accordance with *State v. Catalano*, the City Attorney’s Office recommends that the Mayor and City Commission amend Section 46-152(j) of the City Code to remove from the prohibition of the use of loudspeaker type devices attached to and upon vehicles the carve-out permitting the legitimate use of such devices in political campaigns.

FISCAL IMPACT STATEMENT

N/A

Does this Ordinance require a Business Impact Estimate? No
(FOR ORDINANCES ONLY)

If applicable, the Business Impact Estimate (BIE) was published on: 4/1/2025
See BIE at: <https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notices/>

FINANCIAL INFORMATION

CONCLUSION

Applicable Area

Citywide

Is this a “Residents Right to Know” item, pursuant to City Code Section 2-17?

No

Is this item related to a G.O. Bond Project?

No

Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying? No

If so, specify the name of lobbyist(s) and principal(s):

Department

City Attorney

Sponsor(s)

Mayor Steven Meiner

Co-sponsor(s)

Condensed Title

10:30 a.m. 2nd Rdg PH, Amend Noise Ordinance, Remove Outdated Language. (Meiner) CA

Previous Action (For City Clerk Use Only)

First Reading on 3/19/2025 - R5 N

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE CITY CODE, ENTITLED "ENVIRONMENT," BY AMENDING ARTICLE IV, ENTITLED "NOISE," BY AMENDING SECTION 46-152, ENTITLED "NOISES; UNNECESSARY AND EXCESSIVE PROHIBITED," TO REMOVE FROM THE PROHIBITION OF THE USE OF LOUDSPEAKER TYPE DEVICES ATTACHED TO AND UPON VEHICLES A CARVE-OUT PERMITTING THE LEGITIMATE USE OF SUCH DEVICES IN POLITICAL CAMPAIGNS, CONSISTENT WITH FLORIDA SUPREME COURT PRECEDENT; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, in 2011, the City Commission adopted Ordinance 2011-3737, which incorporated into Section 46-152 of the City Code the language of the noise standards found in Section 21-28 of the Miami-Dade County Code ("County Code"); and

WHEREAS, Section 46-152(j) of the City Code currently provides that "[t]he use or operation on or upon the public streets, alleys and thoroughfares anywhere in this city for any purpose of any device known as a sound truck, loud speaker or sound amplifier or radio or any other instrument of any kind or character which emits therefrom loud and raucous noises and is attached to and upon any vehicle operated or standing upon such streets or public places aforementioned. It is provided, however, that this subsection is not intended to be construed in a manner that would interfere with the legitimate use of the foregoing loudspeaker type devices in political campaigns"; and

WHEREAS, the language of Section 46-152(j) of the City Code is identical to the language of Section 21-28(4)(j) of the County Code; and

WHEREAS, in 1990, the Florida Legislature enacted Section 316.3045 of the Florida Statutes, which provided, as a general prohibition, that it is "unlawful for any person operating or occupying a motor vehicle on a street or highway to operate or amplify the sound produced by a radio, tape player, or other mechanical soundmaking device or instrument from within the motor vehicle so that the sound is: (a) Plainly audible at a distance of 100 feet or more from the motor vehicle; or (b) Is louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools, or hospitals"; and

WHEREAS, the Florida Legislature's enactment of Section 316.3045 of the Florida Statutes also provided a carve-out to the foregoing general prohibition, whereby the general prohibition would "not apply to motor vehicles used for business or political purposes, which in the normal course of conducting such business use soundmaking devices"; and

WHEREAS, in 2012, the Supreme Court of Florida decided *State v. Catalano*, 104 So. 3d 1069 (Fla. 2012), which held that the content-based carve-out in Section 316.3045

of the Florida Statutes for business or political messaging was "an unreasonable restriction on First Amendment rights" and "unconstitutionally overbroad because it restricts the freedom of expression in a manner more intrusive than necessary"; and

WHEREAS, in accordance with *State v. Catalano*, the City desires to amend Section 46-152(j) of the City Code to remove from the prohibition of the use of loudspeaker type devices attached to and upon vehicles the carve-out permitting the legitimate use of such devices in political campaigns.

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

SECTION 1. That Chapter 46, "Environment," Article IV, "Noise," Section 46-152 of the Code of Ordinances of the City of Miami Beach is hereby amended as follows:

**CHAPTER 46
ENVIRONMENT**

* * *

ARTICLE IV. – NOISE

* * *

Sec. 46-152. - Noises; unnecessary and excessive prohibited.

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

* * *

(j) *Loudspeakers, etc.* The use or operation on or upon the public streets, alleys and thoroughfares anywhere in this city for any purpose of any device known as a sound truck, loud speaker or sound amplifier or radio or any other instrument of any kind or character which emits therefrom loud and raucous noises and is attached to and upon any vehicle operated or standing upon such streets or public places aforementioned. ~~It is provided, however, that this subsection is not intended to be construed in a manner that would interfere with the legitimate use of the~~

~~foregoing loudspeaker type devices in political campaigns.~~

* * *

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Miami Beach City Code. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 2025.

PASSED AND ADOPTED this ____ day of _____, 2025.

ATTEST:

Steven Meiner, Mayor

Rafael E. Granado, City Clerk

Underline denotes additions
~~Strikethrough~~ denotes deletions

(sponsored by Mayor Steven Meiner)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney *RR* *3/10/2025*
Date