



A BILL FOR AN ORDINANCE

RELATING TO AMPLIFIED SOUND IN WAIKIKI.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose and findings. The purpose of this ordinance is to preserve the tranquility of Waikiki against noise disturbances by regulating amplified sound from public property in that area.

The Council finds that:

- (1) Waikiki is a permanent home for thousands of local residents and a temporary home to hundreds of thousands of Oahu visitors every year. Both these residents and visitors have a reasonable expectation of privacy in, and of the enjoyment of, their homes (whether temporary or permanent);
- (2) As a densely inhabited and bustling area, Waikiki experiences street and other white noise; however, such noise is different from the excessively loud amplified sounds emanating from public sidewalks that can be heard by Waikiki residents and visitors within their homes at all times of the day and night;
- (3) The First Amendment right to freedom of speech is a hallmark of our constitutional protections. This cherished freedom, however, does and should have limits. A person's right to free speech must be balanced with the right of the recipient not to listen. This concept, which is often referred to as the "captive audience" doctrine, was first recognized by the United States Supreme Court ("Supreme Court") in Kovacs v. Cooper, 336 U.S. 77 (1949). In Kovacs, the Supreme Court upheld the conviction of a person violating an ordinance that prohibited the use of sound trucks that emitted "loud and raucous" noises on city streets, thus establishing the rights of the intended recipients of protected speech to avoid having speech forced upon them;
- (4) The Supreme Court has made it clear that a city may appropriately regulate amplified sound as long as the regulation is content-neutral, narrowly tailored to promote a significant governmental interest, and leaves open ample alternative channels of expression. Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989). Reasonable municipal ordinances regulating amplified sound have been upheld by courts



A BILL FOR AN ORDINANCE

throughout the United States. See: LaVelle v. City of Las Vegas, Nevada, 447 F. Supp. 3d 1015 (D. Nev. 2020); Rosenbaum v. City and County of San Francisco, 484 F.3d 1142 (9th Cir. 2007); and Nylen v. City of Grand Rapids, 475 F. Supp. 3d 744 (W.D. Mich. 2019); and

- (5) It is necessary to reasonably regulate the use of sound-amplifying devices on public sidewalks in Waikiki in order to protect the peace and tranquility of Waikiki residents and visitors and to safeguard their constitutional rights to privacy and freedom from having excessively loud amplified sounds forced upon them in their homes and visitor accommodations.

SECTION 2. Chapter 41, Revised Ordinances of Honolulu 1990 ("Regulated Activities Within the City"), is amended by adding a new article to be appropriately designated by the Revisor of Ordinances and to read as follows:

"Article __. Amplified Sound in Waikiki

Sec. 41-__ .1 Definitions.

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

"Amplified sound" means any sound created by the use of a sound amplifier.

"Director" means the director of the department designated by the mayor to implement this article.

"Enforcement officer" means an officer of the Honolulu police department or any subordinate of the director designated to enforce this article.

"Noise disturbance" means any sound that:

- (1) Is unreasonably loud or disturbing;
- (2) Endangers or injures the health of humans;
- (3) Annoys or disturbs a person of normal sensitivities at a distance of 30 feet from the sound amplifier; or
- (4) Exceeds ___ decibels measured from a distance of 30 feet from the sound amplifier.



A BILL FOR AN ORDINANCE

"Public sidewalk" means a publicly owned or maintained "sidewalk" as defined in Section 29-1.1.

"Sound amplifier" means a device used for the reproduction or amplification of sound, including but not limited to, a microphone, loudspeaker, phonograph player, compact disc player, tape deck, smartphone, tablet, laptop computer, or musical instrument.

"Waikiki" means the Waikiki special district, as described in Section 21-9.80-2.

Sec 41-__2 Restrictions on amplified sound in Waikiki.

Notwithstanding Section 41-31.1, it is unlawful for any person to play, use, operate, or permit to be played, used, or operated, a sound amplifier on a public sidewalk in Waikiki in such a manner as to create a noise disturbance. The playing, use, or operation of a sound amplifier in such a manner or at such a volume as to be audible at a distance of 30 feet from the sound amplifier or as to exceed ___ decibels measured at a distance of 30 feet from the sound amplifier shall be prima facie evidence of the creation of a noise disturbance.

Sec. 41-__3 Exemptions.

The following are exempt from the prohibition in Section 41-__2:

- (1) Activities of the city, State, or the United States;
- (2) Amplified sound emissions:
 - (A) To alert persons to the existence of a public or personal emergency; or
 - (B) In the performance of emergency work; and
- (3) Any parade or activity for which a permit has been issued under Chapter 15, Article 24, or that is exempt from obtaining such a parade or activity permit under Section 15-24.20(b).



A BILL FOR AN ORDINANCE

Sec. 41-__4 Administration—Rules.

- (a) The mayor is authorized to designate the department that shall administer this article.
- (b) The department may adopt rules in accordance with HRS Chapter 91 to implement this article.

Sec. 41-__5 Penalty.

- (a) **Civil Penalty.** An enforcement officer who finds that a person is in violation of this article may serve the person with a notice of violation and request the person to cease the violation. If the person refuses to cease the violation, the enforcement officer may serve the person with a notice of order imposing a civil fine of up to \$100 for a first violation within a one-year period or up to \$250 for a second or subsequent violation within a one-year period from the first violation.
- (b) **Criminal Penalty.** Any person violating Section 41-__2 shall, upon conviction, be punished:
 - (1) By a fine of \$100 for the first violation within a one-year period;
 - (2) By a fine of \$250 for a second violation within the one-year period from the first violation; or
 - (3) By a fine of not less than \$500, nor more than \$1,000, forfeiture of the sound amplifying device, and imprisonment not exceeding 30 days, or any combination of the foregoing penalties, if the violation occurred within one year of the occurrence of two or more previous violations by the person.
- (c) The "one-year period" commences for purposes of subsection (a) on the date of the enforcement officer's issuance of a notice of order; and for purposes of subsection (b) on the date of conviction for the first violation, and ends (for both (a) and (b)) on the same day and month of the following calendar year.

Sec. 41-__6 Enforcement.

Upon finding probable cause to believe that a violation of this article has occurred, any police officer may arrest or issue a summons and citation in compliance with HRS Section 803-6(b) to the person believed to have violated this article."



A BILL FOR AN ORDINANCE

SECTION 3. Severability. If any provision of this ordinance, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

SECTION 4. This ordinance takes effect upon approval.

INTRODUCED BY:

Tony Water

DATE OF INTRODUCTION:

NOV 03 2021
Honolulu, Hawai'i

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20 _____.

RICK BLANGIARDI, Mayor
City and County of Honolulu