

**RESOLUTION NO. 22-\_\_\_\_**

**Resolution Of The City Council Of The City Of Emeryville Approving A Waiver From The Noise Ordinance To BioMed Realty For Early Morning Work On All Mondays Between January 9, 2023 and May 22, 2023 From 5:00 A.M. To 7:00 A.M. At 4555 Horton Street (Garage Building 14 Of BIOMED Project) And Designating Conditions Of Approval (APN: 49-1544-1-4) (CEQA Status: Exempt Pursuant To State CEQA Guidelines Section 15061(b)(3))**

**WHEREAS**, on October 14, 2022, BioMed Realty and Hathaway Dinwiddie (“Applicant”) requested a noise waiver to allow work from 3:00 a.m. to 7:00 a.m. on all Monday mornings through December 2023, for stressing of post tension cables in the concrete at the Garage Building 14 of the BIOMED project under construction at 4555 Horton Street; and

**WHEREAS**, on November 17, 2022, the Applicant submitted a revised request for a noise waiver to allow work from 5:00 a.m. to 7:00 a.m. on all Monday mornings through May 2023; and

**WHEREAS**, because Monday December 26 (Christmas), Monday, January 2 (New Years’ Day) and Monday, May 29 (Memorial Day) are City holidays, staff believes that the request for Monday morning work should not begin until January 9, 2023 and should end by May 22, 2023 thus avoiding all City holidays; and

**WHEREAS**, the stated reason for the request is to increase site and worker safety; and

**WHEREAS**, Chapter 13 of Title 5 of the Emeryville Municipal Code limits construction noise to 7:00 a.m. to 6:00 p.m. weekdays, but allows a developer or contractor to ask the City Council for a waiver of the construction noise restrictions; and

**WHEREAS**, on December 20, 2022, the City Council held a duly and properly noticed public hearing to consider the request, the staff recommendation, and all public comments received; now therefore, be it

**RESOLVED**, that the City Council of the City of Emeryville hereby finds that the noise waiver for early Monday morning construction work at 4555 Horton Street is exempt from the California Environmental Quality Act (CEQA) under the “common sense exemption” that CEQA applies only to projects which have the potential for causing a significant effect on the environment, as stated in Section 15061(b)(3) of the State CEQA Guidelines, and in this instance it can be seen with certainty that there is no possibility that the noise waiver will cause a significant effect on the environment; and be it further

**RESOLVED**, that the City Council finds that the conditions set forth below provide adequate protection for nearby residents and businesses; and be it further

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**RESOLVED**, that the City Council hereby approves the request for a waiver of construction noise hours for work early morning works on all Mondays between January 9, 2023 and May 22, 2023 at 4555 Horton Street with the following conditions:

1. Work shall be allowed on all Monday mornings from 5:00 a.m. to 7:00 a.m. between January 9, 2023 and May 22, 2023, for stressing of post tension cables in the concrete at Garage Building 14 of the BioMed project. All work shall be limited to that described in the letter from BioMed Realty dated November 17, 2022.
2. Two signs shall be posted indicating the name and telephone number of a person to contact for concerns or complaints. This telephone must be answered by a live person during construction hours (not by voice mail or answering machine). This person must have the authority to stop work. These signs must be clearly legible from Horton Street.
3. The applicant shall notify all neighbors within 300 feet of the site, and the Emeryville Police, Fire and Public Works departments, prior to commencing Monday morning work.
4. If residents or local businesses complain, all work on the site and in the vicinity shall cease until the issue is resolved.
5. The City Council may revoke or modify this approval if the applicant fails to comply with any of these conditions of approval, or if any complaints are received and not satisfactorily resolved.

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**ADOPTED**, by the City Council of the City of Emeryville at a regular meeting held Tuesday, December 20, 2022, by the following vote:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

DocuSigned by:  
*John Kennedy*  
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\_\_\_\_\_  
CITY ATTORNEY