



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** July 23, 2019

**TO:** Christine Daniel, City Manager

**FROM:** Charles S. Bryant, Community Development Director

**SUBJECT:** Resolution Of The City Council Of The City Of Emeryville Granting A Waiver From The Noise Ordinance To EAH Housing And J.H. Fitzmaurice, Inc. For Saturday And Sunday Work From August 14, 2019 Through October 30, 2019 Between The Hours Of 9:00 A.M. And 5:00 P.M. For Interior Work Including Drywall, Taping, Texturing, Painting And Finishes; Courtyard Work Including Lath, Stucco, Paint, Waterproofing And Pavers; And Exterior Work Including Painting And Thin Brick Installation At 3706 San Pablo Avenue (APN: 49-951-8 and -9) (CEQA Status: Exempt Pursuant To State CEQA Guidelines Section 15061(b)(3))

### RECOMMENDATION

Staff recommends that the City Council hold a public hearing and thereafter adopt the attached Resolution granting a waiver from the Noise Ordinance to allow work from 9:00 a.m. to 5:00 p.m. on Saturdays and Sundays from August 14, 2019 through October 30, 2019 at 3706 San Pablo Avenue. Interior work would include drywall, taping, texturing, painting and trim finishes. Courtyard work would include lath, stucco, paint, waterproofing and pavers. Exterior work would include painting and thin brick installation. Sunday work would be restricted to the interior and courtyard, using only hand tools and mixers.

### BACKGROUND

On January 22, 2015 the Planning Commission approved an 87-unit affordable housing development with approximately 6,900 square feet of commercial space at 3706 San Pablo Avenue (now known as "Estrella Vista"). The contract completion date for the project was July 15, 2019. However, due to unforeseen conditions associated with the removal of an existing billboard and soil abatement at the beginning of the project, the contract completion date was originally extended to August 14, 2019; and is now extended to October 30, 2019.

On February 19, 2019, the City Council approved a noise waiver for Saturday work from February 23, 2019 through August 10, 2019 between the hours of 9:00 a.m. and 5:00 p.m. (Resolution No. 19-19). The approved work included interior paint, texture, and stucco using hand tools and mixers, as well as exterior lath, stucco, painting, and waterproofing, and paver installation in the courtyard. In approving the noise waiver, the City Council added three conditions: (1) that work not be allowed on the Memorial Day Weekend

(Saturday, May 25, 2019), (2) that Saturday parking for workers be redirected to West MacArthur Boulevard, and (3) that plastic tarps be in place on all scaffolding facing adjacent properties during stucco or painting work.

There have been several complaints from a neighbor on Linden Street during Saturday work. However, the contractor has abided by the conditions of the noise waiver and has attempted to address the neighbor's concerns to the extent possible. The City has not been compelled to stop Saturday work, because staff has not become aware of any violations of the conditions of the noise waiver.

The General Contractor for the project, J.H. Fitzmaurice, Inc. is now requesting for Saturday work to continue past the original approval date of August 10, 2019 through the new contract completion date of October 30, 2019. In order for the work to be completed within this timeframe, the General Contractor is also requesting that Sunday work be allowed. All weekend work would take place from 9:00 a.m. to 5:00 p.m. from August 14, 2019 through October 30, 2019. The General Contractor does not anticipate working every Saturday and Sunday during this time, but rather two or three Saturdays per month with select Saturday and Sunday work as needed.

As was the case with the previous noise waiver, most of the work will require hand tools; mixers for paint, texture, and stucco will also be required, as well as equipment required for concrete work. Proposed interior work includes drywall, taping, texturing, painting and finishing work. Proposed exterior work includes lath, stucco, paint, waterproofing and pavers at the courtyard elevation; and also includes painting and thin brick installation at the San Pablo Avenue, West MacArthur Boulevard and 37th Street elevations. Site work will include concrete, paver, and landscaping work. To avoid impacting on-street parking, the General Contractor proposes parking all vehicles in the garage.

## **DISCUSSION**

### *Noise Ordinance Waiver Procedures*

Chapter 13 of Title 5 of the Emeryville Municipal Code limits construction noise to 7:00 a.m. to 6:00 p.m. on weekdays but allows a developer or contractor to ask the City Council for a waiver of the construction noise restrictions. Section 5-13.06 sets forth the procedures for a waiver. The applicant must submit a request, accompanied by the required fee, to the Planning Director, stating the hours and days of work requested, type of work to be conducted, type of equipment to be used, location on the property where work will take place, and reason(s) why a waiver is needed. The City Council then holds a noticed public hearing on the request and may grant the request by resolution and designate such conditions as it deems necessary. After granting the request, the City Council may revoke or modify the waiver if the applicant fails to comply with any of the conditions upon which the waiver was granted, or if complaints are received and not satisfactorily resolved.

### *Reason for Noise Waiver Request*

In Section 1 of the attached request letter, the applicant states that:

“We are requesting for Saturdays and Sundays from 9 a.m. to 5 p.m. to be considered as allowable workdays. We are requesting up to an average of two to three Saturdays per month for the remainder of the anticipated construction period. We will only be working select Saturdays and Sundays for critical work as needed; we will not be working every Saturday and Sunday.”

In Section 5 of the attached request letter, the applicant states that:

“This waiver is being requested and is needed in order to complete the project per the contract completion date. The contract completion date is July 15th, 2019. Due to unforeseen conditions associated with removal of an existing billboard and abatement of contaminated soils at the beginning of the project, the contract completion date was pushed back to October 30, 2019. In order to make up for this lost time, J.H. Fitzmaurice and EAH Housing are asking for certain Saturdays [and Sundays] to be allowed as work days for scopes of work that impact the overall schedule. Previous request granted permission to work Saturdays up until 8/14/19 we would like to request that date to be extended to 10/30/19.”

Staff believes that the request for weekend work is reasonable given the nature of the work to be performed. Staff notes that the applicant will not be working every weekend nor necessarily both Saturdays and Sundays; but the flexibility to do so is needed to accommodate completing construction within the extended timeline. However, in order to minimize impacts on the neighbors, staff believes that Sunday work should be limited to the interior and courtyard using only hand tools and mixers; no exterior work should be allowed on Sundays. In addition, staff believes that work should not be allowed on the Labor Day Weekend (Saturday, August 31, 2019 and Sunday, September 1, 2019). The attached resolution includes such conditions. Similar to the previous noise waiver, the attached resolution also includes conditions that workers park in the building’s garage, and that plastic tarps be in place on all scaffolding facing adjacent properties during stucco or painting work.

### **FISCAL IMPACT**

None.

## **STAFF COMMUNICATION WITH THE PUBLIC**

As required by the Noise Ordinance, staff mailed notices to property owners and site addresses within 300 feet of 3706 San Pablo Avenue and published a legal advertisement in the Oakland Tribune.

## **CONCLUSION**

Staff recommends approval of the noise waiver request subject to the conditions of approval outlined in the draft resolution.

**PREPARED BY:** Navarre Oaks, Assistant Planner

## **APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:**



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Christine Daniel, City Manager

## **ATTACHMENTS**

- Draft Resolution, including Exhibit A, Applicant Request Letter