



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: February 16, 2016

TO: Carolyn Lehr, City Manager

FROM: Jennifer G. Tejada, Chief of Police

SUBJECT: Study Session on Amendments to the City of Emeryville Noise Ordinance (Emeryville Municipal Code 5-13.01 et. Seq.)

RECOMMENDATION

Receive report and review options to amend City of Emeryville Noise Ordinance, Chapter 13 of Title 5 of the Emeryville Municipal Code.

BACKGROUND

In 2003 the Emeryville City Council approved the current noise ordinance, Emeryville Municipal Code 5-13 (the "Ordinance"). In adopting the Ordinance, City Council cited several reasons including the change from a largely industrial city to a mixed use city with industrial, commercial and residential representation. The City Council considered concerns from residents about noise levels, as well as the need to recover costs for resources required to respond to repeated violations of the Ordinance. The City Council passed the Ordinance unanimously and it has remained nearly unchanged for 13 years.

In that time, Emeryville's residential population continued to grow as industrial spaces were converted to commercial, residential or mixed use. Emeryville's population has increased from 7,276 in 2003 to 11,227 in 2014, a 54% increase. The result is that the residents have increasingly come into conflict with the remaining commercial and industrial uses in the City. In 2015 the Police Department responded to 286 noise complaints.

Emeryville's General Plan contains goals for mitigating noise including:
Protection from noise—Protection of life, natural environment, and property from manmade hazards due to excessive noise exposure. (Emeryville General Plan Goal CSN-G-9, p. 6-27)

Additionally, addressing citizens' noise concerns has been the topic of several recent City Council and Public Safety Committee meetings. In recent meetings, the City Council has rejected requests from businesses for Noise Ordinance waivers

(September 2015) and reviewed the Cabaret Permit Ordinance in efforts to address residents' concerns about noise (December 2015). In recent months, numerous Watergate residents have spoken at Public Safety Committee meetings and at City Council meetings regarding elevated noise levels coming from Trader Vic's restaurant. The City Council will hold a special meeting on February 17, 2016, to consider noise complaints related to Trader Vic's.

ANALYSIS

In response to concerns of increased noise conflicts, the City Council directed staff to analyze and compare other cities' noise ordinances. Staff began by selecting a variety of cities in different locations throughout the State. This was done to obtain a varied sample in size, population, geographic location and economic characteristics for comparison. Although the sample cities were varied, many of the cities also share characteristics of Emeryville, including locations of mixed uses, large commercial centers and concentrated urban development.

Staff selected the following 14 cities for comparison to Emeryville:

- Berkeley
- Cathedral City
- Dublin
- Folsom
- Hayward
- Marina
- Novato
- Pleasant Hill
- Richmond
- Rohnert Park
- Riverside
- San Marcos
- Santa Maria
- Santa Monica

Comparison of the cities' noise ordinances focused on the following ten areas:

1. Whether subjective criteria were used to assess violations
2. Whether objective criteria were used to assess violations
3. Whether other factors to consider were specified
4. Restrictions during specific days and/or hours
5. Whether cost recovery was included

6. If specific types of noise were prohibited
7. If exemptions were listed
8. Whether a waiver or permit process was included
9. If animal noise was included
10. If a mandatory warning was necessary prior to issuance of a citation

The chart below reflects whether or not the listed city's noise ordinance contains the specified attributes.

	1. Subjective-Normal Sensitivity	2. Objective-Decibels/Distance	3. Factors to Consider	4. Restricted Hours/Days	5. Cost Recovery	6. Specific Types of Noise	7. Exemptions	8. Waiver or Permit	9. Includes Animal Noise	10. Mandatory Warning
Emeryville	●		●	●	●	●	●			
Berkeley	●	●	●	●	●	●	●	●		●
Cathedral City	●	●	●	●	●	●				
Dublin	●		●							
Folsom		●		●	●	●				●
Hayward	●	●	●	●	●		●	●		●
Marina	●	●	●	●		●	●	●		
Novato	●		●	●			●		●	
Pleasant Hill	●	●	●	●		●		●		
Richmond	●	●	●	●	●	●	●	●	●	●
Rohnert Park	●	●	●	●	●	●	●	●	●	
Riverside	●	●	●	●		●	●		●	
San Marcos	●	●	●	●		●	●		●	
Santa Maria	●	●	●	●		●	●	●	●	
Santa Monica	●	●	●	●	●	●	●	●	●	
TOTAL/15	14	11	14	14	7	12	13	9	7	4

1. Subjective Criteria For Evaluation

A component of fourteen of the fifteen ordinances in this review contained subjective criteria for determining whether a violation was committed. Nearly all ordinances, including Emeryville's ordinance, have language referring to a person of "normal sensitivity". Folsom was the only city whose ordinance did not contain any subjective criteria for evaluation.

Hayward's ordinance contains a list of seventeen criteria which should be used in proving a violation of the ordinance where use of decibel meter is not necessary. [HMC 4-1.02.2(a)] This section is separate and independent from the section which specifies decibel levels. Those criteria include: the volume of the noise; the pitch or frequency; the tonal or rhythmic quality of the noise; the proximity of the noise to residential sleeping facilities or places of work; the day of the week; and the duration of the noise.

2. Objective Criteria For Evaluation

Ten ordinances contain objective criteria for evaluation that specifies decibel limits and/or distances that establishes violations. Seven ordinances contain specific decibel levels and procedures for where and how to measure. Several ordinances that do not have a specified decibel level, have distances listed that establish violations.

The City of Marina lists 200' from the source as the distance for amplified sound device violations, or 50' from a vehicle. The 50' criterion is in line with State law on amplified sound from a vehicle on a roadway (27007 CVC). Cities such as Pleasant Hill, Riverside and San Marcos articulate that audible sound at the various listed distances are prima facie proof of a violation.

Emeryville's ordinance does not contain any specific distance or decibel level criterion. While distance may be easy to estimate and establish, the use of decibel levels requires special equipment and training to properly use. This would have a fiscal impact in capital outlay, maintenance and training to be properly defensible if a citation was issued.

3. List Of Factors To Consider

Fourteen of fifteen cities' noise ordinances contained a list of factors to consider when determining if a particular noise violates the ordinance. Nearly all the lists include elements of: level, duration, time and place. Emeryville's ordinance contains the list under "Prohibited Use - General Standards" (EMC 5-13.03).

4. Restrictions During Specified Hours/Days

Of the fifteen ordinances, only Dublin's ordinance does not contain any specific days or times when noise is prohibited. Emeryville's ordinance prohibits specified noises from 7:00 am to 9:00 pm on weekdays and 8:00am to 9:00pm on Saturday and Sunday. Emeryville's sound restrictions are consistent with the majority of other cities' ordinances.

5. Cost Recovery

Emeryville is one of seven cities that specifies cost recovery for abatement or enforcement. Emeryville's ordinance specifies that the cost of the law enforcement response to restore order at the scene of a loud or unruly party will fall on the person responsible for the party or the property owner (EMC 5-13.09(b)). Most of the remaining ordinances refer to recovery costs for abatement of the noise, normally associated with code enforcement.

6. Specific Types Of Noise Prohibited

Twelve ordinances contain a list or describe types of noises that are prohibited. The list in Emeryville's ordinance is generally comprehensive under EMC section 5-13.04(b)(1)-(6)¹. Several other cities specifically mention hawkers/peddlers and sound trucks, which are not included in Emeryville's ordinance. Noise emanating from a nightclub, bar, or an establishment with amplified music is specifically regulated in Santa Monica's noise ordinance (SMMC 4.12.140) as well as business support operations, i.e., deliveries, trash disposal and recycling activities (SMMC 4.12.150). The nightclub section specifies construction materials (doors, windows) and location to mitigate sound. The business support section prohibits outdoor speakers and specific remedies for nightclub/bars located within 100' of residentially zoned property. Remedies include signage for patrons reminding them of the proximate residences and not to disturb the peace. It also calls for having employees assigned to exterior areas at closing time to ensure patrons leave promptly and quietly.

7. Exemptions

Thirteen cities specifically list exemptions for noise regulations Emeryville only exempts emergency work (EMC 5-13.07). Some of the notable exemptions not included in Emeryville's municipal code include school activities and outdoor gatherings in public areas, including community events (Santa Monica, Cathedral City, Folsom).

¹ Includes excessive noise from commercial, industrial or residential establishments; sustained mechanical noise; loading operations; band or concerts; and electronically amplified sound.

8. Waivers

Emeryville is one of nine cities that list a permit or waiver process to obtain a variance from the noise ordinance. Emeryville's conditions for approval are consistent with other cities' ordinances.

9. Including Animal Noise Violations

Seven cities include animal noise in their ordinances. Emeryville's noise ordinance notes that animal noises are prohibited under EMC 6-1.117.

10. Mandatory Warning

Only four cities (Berkeley, Folsom, Hayward and Richmond) include language that mandates a written warning before citations are generally issued.

STAFF RECOMMENDATIONS

Staff recommends the following:

- Establish objective criteria for the noise ordinance. Two common methods are sound measurement (decibels) and distance. The most practical and cost effective method is to adopt distance measurement as a criteria. Several ordinances referenced above include distances from which the sound is audible to establish the violation. Examples include Cathedral City MC 11.93.030 A(4) and Riverside MC 7.35.010 (B)(1). Some cities provide noise protection greater than State of California laws. Richmond's vehicle noise ordinance is more restrictive than the California Vehicle Code (CVC) and prohibits audible sound from 25 feet, versus 50 feet in the CVC (RMC 14.70.060).

The other objective method for enforcement of noise disturbance is decibel measurement. Decibel measurements require properly calibrated equipment and personnel trained to use it. Decibel measurements also require specific guidelines for when, where and how to measure sound. An advantage of decibel measurement is that it is an objective standard which may be easier to defend if contested. If a decibel measurement is chosen, staff recommends a matrix similar to Richmond's ordinance (RMC 9.52.100), Berkeley (BMC 13.40.050) or Santa Monica (SMMC 4.12.060).

- Adopt provisions which prohibit establishments operating outdoor speakers within 100' of a residentially zoned property [Santa Monica MC 4.12.150(b)], and

establish guidelines to discourage disturbances by patrons from nightclubs and bars such as signage and staff monitoring the exterior as patrons leave [Santa Monica MC 4.12.160(c)]

- Establish reasonable exemptions for school and community related activities at schools and parks which do not adversely impact neighboring residences. The upcoming opening of the athletic fields at the Emeryville Center of Community Life (ECCL) may mean potential noise conflicts with residents surrounding ECCL. Addressing this in the ordinance will help distinguish actual violations from noise generated by reasonable activity.

PREPARED BY: Fred Daur, Acting Captain
REVIEWED BY: Jennifer G. Tejada, Chief of Police

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



Carolyn Lehr, City Manager

ATTACHMENTS

Attachments: Noise Ordinances from the following cities:

- Emeryville
- Berkeley
- Cathedral City
- Dublin
- Folsom
- Hayward
- Marina
- Novato
- Pleasant Hill
- Richmond
- Rohnert Park
- Riverside
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