

Tom F. McGurk

From: Sheri Hartz
Sent: Tuesday, January 16, 2018 9:14 AM
To: Tom F. McGurk
Subject: FW: Thoughts on the Noise Ordinance update
Attachments: NoiseOrdImp0116.docx; ATT00001.htm

Please handle as late correspondence. Thanks - Sheri

From: Michael Guina
Sent: Monday, January 15, 2018 2:18 PM
To: Sheri Hartz <shartz@emeryville.org>
Cc: Carolyn Lehr <clehr@emeryville.org>
Subject: Fwd: Thoughts on the Noise Ordinance update

Sheri,

FYI on late correspondence for the 1/16 meeting. Thanks.

-Michael

Begin forwarded message:

From: "Joe Lutz" <[REDACTED].net>
Date: January 15, 2018 at 12:39:51 PM PST
To: "John J. Bauters" <jbauters@emeryville.org>, "Christian Patz" <crpatz@gmail.com>, <amedina@emeryville.org>, "Dianne Martinez" <dmartinez@emeryville.org>, "Scott Donahue" <tsdonahue@sbcglobal.net>
Cc: "Carolyn Lehr" <clehr@ci.emeryville.ca.us>, "Jennifer Tejada" <jtejada@emeryville.org>, "Charles Bryant" <cbryant@ci.emeryville.ca.us>, "Michael Guina" <mguina@emeryville.org>, "Fran Chiappetta" <[REDACTED]>, "mary farrell" <[REDACTED]>, "Betsy Cooley" <[REDACTED]>, "Buzz Cardoza" <[REDACTED]>, "ron freund" <[REDACTED]>, "Kim Adolf" <[REDACTED]>, "Tom Knight" <[REDACTED]>, "Nick Sebastian" <[REDACTED]>, "Deborah " <[REDACTED]>
Subject: Thoughts on the Noise Ordinance update

Happy New Year all.

I sincerely hope that you had time to spend with family and loved ones.

I have been through the documents, and have written out some ideas that I hope can be helpful. I strongly believe the enforcement piece is the area that needs the most work, and will be the most difficult.

Sincere thanks for taking on this very difficult project,

Joe

PUBLIC COMMENT: Lutz_Joe.Email.Received 01/16/18
Re: 01/16/18 City Council Action Item 12.1 - Update of City Noise Ordinance

Practical implications on the Emeryville Noise Ordinance.

1. General

The noise ordinance should not be thought of as the end all for noise issues. I see it as a set of guidelines for folks to recognize their responsibilities in their noise generating activities, and a tool for enforcement to deal with habitual and/or recalcitrant offenders. In my view, the ordinance should be aimed at habitual/recalcitrant offenders, not inadvertent, infrequent, or minor exceeding of the threshold.

The critical element will be enforcement. It is, and has been limited and inconsistent. This will be the most difficult section to create and have it be flexible, enforceable and legally viable. Our current enforcement guidelines are almost non-existent and not coherent in my view. Additionally, incident data capture is not consistent. I go into some ideas in Item 4, and detail specifics in item 5.

Communication, compromise and mediation would hopefully be the first avenue of approach (as we have done with Trader Vic's), but as we all know, there will be mitigation measures required for the long term solution, which have been promised. Concerted attempts at mediation and compromise should be first steps taken.

The initial rollout won't be perfect, will need tweaking and recalibration as issues arise. This is to be expected. Additionally, I would not expect the finished product to address every issue (such as a barking dog or short term event). Some thought needs to be put into these eventualities. I discuss this briefly below.

In order to have success, a focused coordinated effort needs to be undertaken by the City Council, City Staff including Planning and Buildings, Legal and EPD along with resident input and feedback.

2. Options

This is a critical decision as it will have a ramifications in all three related documents, as well as legal and enforcement impacts. I do not have a preference, except that decibel measurement should be included for those cases that would need enforcement action. I would expect those to diminish as the implementation and enforcement are rolled out and adjusted.

Zones look like a good starting point, but there are issues. As chair Donaldson mentioned in the planning commission meeting, when two conflicting zones abut, the legal noise at an industrial zone may be untenable for an adjacent residential zone.

In Watergate, which is one large 26 acre zone, the ambient noise of apartment on Powell may be 5-10 dba or more above the cove zone on the North West corner, even though it is marked as one zone. This is critical, and favors the ambient noise method.

3. Decibel Measurement

If a situation becomes chronic, then an objective standard needs to be used for enforcement. This is obviously the dba meter. During the ESA meeting and the Planning Commission meeting on this subject, I heard statement that seemed to make this overly complicated. There was a question on the legality of taking these measurements, but considering the extensive use of cameras and radar for vehicle enforcement, I believe this is a non-issue.

My view of the equipment required is as follows.

- a. A calibration mechanism that can calibrate both level one and level 2 meters.
- b. 1 or 2 level 1 meters with recording capabilities. Should calibrate with item a.
- c. 3-5 level 2 meters (@\$100 or less) for officers to use. These are quite small and easy to carry and calibrate (less than 30 seconds). They will need to be calibrated (item a. again).

Fran, I and other residents have decibel meters. We would purchase those that are compatible with police equipment for calibration purposes, and some guidelines how our measurement can aid the city (i.e. videos accompanying the measurements). This information can be used by enforcement to inform the offending party of an issue with proof.

The level one meter would be deployed for long term and or recalcitrant offenders (Thanks to commissioner Banta for this idea). The level two can be quickly calibrated and easily carried by EPD for ad hoc and spot checks. Again, these spot checks may or may not come with actionable results. However, as radar signs and parked police cars act as a deterrent, so may these spot checks.

4. Enforcement

An ordinance that is not enforced is worse than no ordinance. Clear and concise protocols must be developed for this to be effective.

As noted earlier, a flexible policy needs to be in place to be fair to all parties. It could start with an informal warning, some mediation, formal warnings, citations, cost recovery and closure. All parties will need to work together to develop procedures that will be fair and effective.

There will be some calls where enforcement is not possible. In order to avoid looking ineffective in these situations, I recommend that an incident report form should be available to hand to the resident (and also be available on the city website) to ensure proper data capture. Clear incident reporting and responding party responsibilities should be spelled out. Incidents must be consistently captured, otherwise the ordinance will become inconsistent and ineffective.

Additionally, the responding officer could stress the importance of communication, and possibly have a list of mediation service available for these situations.

5. Specifics

- a. Although the 55 dba level is rated acceptable, when on an exterior balcony in the Emery Cove area, that is just at the limit of the ability to have a conversation. I am not sure what the source level is at that measurement. Intensity and breadth of spectrum will also impact perceived loudness.
- b. In section 5-13.09 Loud parties or Gatherings of the noise ordinance, it states that a call for law enforcement for loud parties more than once in a one month period would trigger cost recovery. I do not believe that has ever happened in the city, and am sure it has not at Watergate.
- c. In section 5-13.11 Violations: Public Nuisance, abatement procedures are said to be listed in Chapter 11, Title 6. Looking at chapter 1, I did not see noise specifically mentioned, though there was a reference to California Civil Code 3480, which was a broad catch all. I believe more relevant and concise wording is required.
- d. In the Performance Standards, 9-5.1104 Measurements, it is stated that measurements shall be made by competent professionals. What does that mean re: noise ordinance?
- e. On table 9-5.1109, the measurements are the same for all RM zones, and is not listed as external or internal. Not all RM zones have the same ambient, and there needs to be a more nuanced approach.
- f. Table 22 on page 65 of the ESA update, Nighttime is listed as 10pm to 7am. Why was this switched from the longstanding 9pm start? Additionally, the nighttime dba readings for Watergate are listed as 52 – 54 – 56. This is directly contradicted by page 7 of the same study which has an average in the mid 40 dba.
- g. Table 23 on page 66 of the ESA update, there is a recommendation of 60 dba daytime 55 dba nighttime. It does not indicate if this is interior or exterior. The city of Folsom standards are much more appropriate for the Emery Cove area. (Page 5 of the Planning Commission Study Session Staff Report). Those figures should be 50/45 interior and or 55/50 exterior.

Joe Lutz