



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** February 19, 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 Work From February 23, 2019 Through August 10, 2019 Between The Hours Of 9:00 A.M. And 5:00 P.M. For Work With Hand Tools And Mixers For Paint, Texture, And Stucco 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 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 from February 23, 2019 through August 10, 2019 for work using hand tools and mixers at 3706 San Pablo Avenue.

## 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 extended to August 14, 2019.

The General Contractor for the project, J.H. Fitzmaurice, Inc. is requesting Saturday work from 8:00 a.m. to 5:00 p.m. from February 23, 2019 through August 10, 2019.

Most of the work will require hand tools; mixers for paint, texture, and stucco will occasionally be required. Proposed exterior work includes lath, stucco, painting, waterproofing, and paver installation in the courtyard, which is not visible from the street. The majority of the proposed work will be located in the interior of the building. The interior work includes drywall, taping, texturing, painting, and installing interior trim finishes. On-street parking will not be impacted as all worker vehicles will be parked 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. 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 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 15<sup>th</sup>, 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 August 14<sup>th</sup>, 2019. In order to make up for this lost time, J.H. Fitzmaurice & EAH Housing are asking for certain Saturdays to be allowed as work days for scopes of work that impact the overall schedule. In addition, EAH represented the July 15<sup>th</sup>, 2019 completion date to its lender and investor. As a non-profit affordable housing developer reliant on tax credit financing for this project, not completing the project by mid-July 2019 would result in downward adjustment of tax credit funding. This downward adjustment could harm the ability to convert to permanent financing and begin moving tenants into the completed project. Lastly, the 3706 San Pablo project is providing affordable housing to a community and area in need of such affordable housing, which the City of Emeryville is aware of as it has contributed funds to this project. Allowing to work certain Saturdays would better ensure that this critical affordable housing will be delivered on time.”

Staff believes that the request for Saturday work is reasonable given the nature of the work to be performed. However, considering that part of the request is for exterior building work that is in close proximity to the residential neighbors on the east side of 3706 San Pablo Avenue, staff believes that the request to start work at 8:00 a.m. is too early, and recommends a start time of 9:00 a.m.

**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

**ATTACHMENT**

Draft Resolution, including Exhibit A, Applicant Request Letter