



Office of the City Manager

ACTION CALENDAR
November 17, 2009

To: Honorable Mayor and Members of the City Council
From:  Phil Kamlarz, City Manager
Submitted by: Fred Medrano, Director of Health Services
Subject: Amendments to Community Noise Ordinance: BMC Chapter 13.40

RECOMMENDATION

Adopt the first reading of an Ordinance amending the Community Noise Ordinance (BMC Chapter 13.40) to:

- 1) Provide appropriate exceptions for entertainment establishments to be determined by the Zoning Adjustments Board through the use permit process;
- 2) Provide additional discretion for amplified sound permits at festivals;
- 3) Clarify noise standards, permit procedures, and enforcement procedures.

FISCAL IMPACTS OF RECOMMENDATION

Unknown.

CURRENT SITUATION AND ITS EFFECTS

The Community Noise Ordinance (“CNO”) sets the permissible exterior and interior noise standards within different types of zoning districts and requires a permit for amplified sound at an event. The CNO needs to be updated to 1) provide appropriate exceptions for entertainment establishments to be determined by the Zoning Adjustments Board (“ZAB”) through the use permit process; 2) provide additional discretion for amplified sound permits at festivals; and 3) clarify noise standards, permit procedures, and enforcement procedures.

BACKGROUND

On June 23, 2009, the City Council directed the City Manager to develop recommendations on how the CNO can better accommodate the City’s economic development goals by facilitating live music venues in the Downtown and amplified sound permits for festivals. Last year, on October 16, 2008, staff proposed changes to the CNO to clarify general noise standards and other provisions, simplify enforcement procedures, and impose a limit of nine amplified sound permits for a single public outdoor location during a calendar year. At the hearing last year, Council indicated the proposed limit of nine amplified sound permits for the same outdoor public location was

problematic, e.g. for labor pickets. Accordingly, the current proposed amendments do *not* include any limit on amplified sound permits at a single outdoor public location. However, the other 2008 recommendations are again proposed here.

RATIONALE FOR RECOMMENDATION

A. New Special Standards For Live Music Venues

Under proposed Section 13.40.115, entertainment establishments that cannot meet the standards set forth in the CNO may apply for a use permit to exceed the sound emission levels and the time period restrictions for sound levels set by the CNO. Under Section 13.40.115, the use permit for an entertainment establishment cannot allow sound levels more than five decibels higher than either the applicable standard in the CNO or the ambient noise level, whichever is higher. This higher cap through the use permit process should give adequate leeway for live music venues. The proposed substitution of a use permit process for the general standards set forth in the CNO:

- Supports the City's economic development goals by accommodating live music venues;
- Balances the needs of a particular venue with the needs of nearby residences;
- Ensures the community can voice concerns at a public hearing at the ZAB;
- Allows site-specific sound levels (up to a ceiling) for particular times and on particular days of the week such as weekends (as opposed to a generalized standard set by the CNO);
- Allows site-specific mitigation measures such as positioning speakers for outdoor sound amplification equipment away from residential property; and
- Would retain general standards such as controlling the volume of sound at the property line so that it will not be unreasonably loud or jarring to reasonable persons of normal sensitivity within the area of audibility.

B. Additional Discretion For Amplified Sound Permits For Festivals And Events

Sections 13.40.090 and 13.40.100(B)(5) already allow staff to issue amplified sound permits for festivals and other outdoor events with an upper limit of 10 decibels above the ambient noise level. The proposed revision of Section 13.40.100(B)(5) would increase the upper decibel limit for such amplified sound permits to 15 decibels above the ambient noise. This increase should be more than adequate to accommodate all festival-type events.

C. Simplified Enforcement Procedure

The CNO currently requires (in Section 13.40.030(C)) a written warning for most noise violations and further states that no violation arises unless the disturbance continues for a full 15 minutes after the written warning is given. This procedure is cumbersome and allows too much leeway for scofflaws. The proposed amendment to Section 13.40.030(C) allows an oral warning and eliminates the 15-minute leeway period following the warning. This will simplify enforcement and allow staff to be more effective in gaining compliance. Staff will retain discretion not to issue a citation for a short period of non-compliance after a warning is given, but would no longer be required to standby on the site and monitor the sound level for a full 15-minute period.

D. Adjusting Staff Discretion On Enforcement

Two proposed revisions would afford staff greater discretion in how and when to enforce the CNO and two other revisions would restrict staff discretion. First, proposed Section 13.40.080(D) provides that if the Environmental Health Division determines that a noise level has been mitigated to the extent technically and economically feasible, then that noise shall not be considered a violation. The reason for this exception is that certain noise limits in the ordinance, e.g. interior noise standards, are not technically or economically feasible in certain older buildings. Therefore, enforcement is not appropriate in such instances. Proposed Section 13.40.030(E) expressly recognizes the Environmental Health Division has discretion to allow such exceptions on a case-by-case basis.

Second, due to the number of anonymous noise complaints, especially in commercial areas, and the difficulty in investigating anonymous complaints, revisions to Section 13.40.040 would raise the threshold for a formal investigation by the Environmental Health Division from (a) any complaint, to (b) two non-anonymous complaints in commercial areas or one non-anonymous complaint elsewhere. Staff would retain the discretion to formally investigate a single anonymous noise complaint, but would not be required to do so.

Alternatively, current Section 13.40.050(B) and Section 13.40.060(B) give staff the discretion to *lower* the maximum allowed noise by five decibels in cases of certain sounds such as a whine, screech, hum, riveting, hammering, music, or speech. The discretion these sections give to staff is vague and not utilized. Similarly, current Section 13.40.050(B) suggests staff has the discretion to create geographic area classifications for different levels of noise beyond or perhaps within those zoning districts set by Table 13.40-1. This discretion is also vague and not utilized. Accordingly, the provisions within these Sections are proposed for deletion.

E. Clarifying Current Enforcement Procedures

Currently, Section 13.40.070(A) prohibits general noise disturbances, while Section 13.40.070(B) lists 14 specific types of noise disturbances that violate the CNO. Under long-standing enforcement practice, certain of these violations require (a) only a warning, (b) only a measurement, (c) both a warning and a measurement, and (d) neither a measurement nor a warning. Accordingly, Section 13.40.070 has been revised to add a preamble that specifically states when a measurement and/or a warning is required for a violation to occur. The categories in Section 13.40.070 are as follows:

- B(1) (radios, TVs, instruments) warning & measurement
- B(2) (amplified sound) warning & measurement
- B(3) (raucous yelling) warning only
- B(4) (street sales) warning only
- B(5) (dog barking) warning only
- B(6) (loading and unloading) warning & measurement
- B(7) (construction/demolition) warning & measurement
- B(8) (certain vibrations) warning only
- B(9) (powered model vehicles) warning & measurement
- B(10) (certain emergency test signals) no warning or measurement
- B(11) (domestic power tools) warning & measurement
- B(12) (signage in very loud clubs) measurement only
- B(13) (tamper w/noise reducing device) no warning or measurement
- B(14) (gas-powered leaf blower) no warning or measurement
- A (other general noise disturbances) warning only

F. Clarifying Current Sound Level Requirements

The current maximum sound levels for different zoning districts are set forth in Section 13.40.050 (exterior noise) and Section 13.40.060 (interior noise). These maximum sound levels will remain the same, subject to special permits granting exceptions. However, the revised text better explains how these sound levels are measured.

Maximum sound levels are determined in one of two ways. Either the sound level exceeds a) a pre-set level shown in Tables 13.40-1 and 13.40-2; or b) the existing ambient noise in the area, if the ambient noise is higher than the level set forth in the Tables. Further, the *number of decibels* by which a sound exceeds the applicable standard and the *duration* of the disturbance are both considered in determining when a violation has occurred. The higher the decibel level, the less time above the level set by the Tables or the ambient noise is allowed before a violation arises. The revised text makes these existing rules easier to understand.

G. Clarifying Current Penalty Provision

Currently, under the general provision of Berkeley Municipal Code (BMC) Section 1.20.020, all violations of the BMC can be charged as either an infraction or a misdemeanor at the discretion of the enforcing officer, unless the ordinance expressly states that a violation can *only* be charged as a misdemeanor or *only* as an infraction. Thus, while Section 13.40.030(C) states that a violation is an infraction, a violation can actually be charged as either an infraction or misdemeanor under Section 1.20.020. Added text in Section 13.40.030(B) makes this clear, while the infraction language in Section 13.40.030(C) is deleted.

H. Simplifying Appeal Process

Currently, Section 13.40.120 provides that if the Environmental Health Division issues a permit or variance under the ordinance, a person can appeal that decision to the Community Advisory Health Committee and then to the City Council. The Community Health Advisory Committee has not existed for many years and the Council agenda process is too lengthy to provide a timely appeal in many cases, e.g. where an event is planned to occur shortly after a permit application is submitted. The proposed revision to Section 13.40.120 allows the City Manager to hear and render prompt decisions on appeals. Conditional Use Permits (“CUPs”) issued by the ZAB, however, may still be appealed to the City Council with a recommendation from the City Manager.

Similarly, Section 13.40.090(A) allows a person objecting to a variance issued by the Environmental Health Division to require a public hearing on the variance. The revision to Section 13.40.090(A) deletes the public hearing requirement and instead states the Environmental Health Division will facilitate a discussion with the person who applied for the variance to mitigate the objecting party’s concerns at an administrative level.

I. Publication Of The Amplified Sound Permit Reservation Procedure

Currently, Section 13.40.100 (Preamble) requires staff to publicize the availability of amplified sound permits during the first six weeks of the year. This requirement suggests amplified sound permit applications for the entire year should be submitted during that period. However, early submittals can cause conflicts with street events and festivals that are requested later in the year. The revisions to Section 13.40.100 delete this publication requirement potentially reducing the number of conflicts caused by the current system.

Section 13.40.100(A) provides that applications for amplified sound permits must be submitted at least 30 days in advance of the requested date of the proposed event. Additional text has been added to clarify that the 30-day advance submittal requirement

does not apply if the event is in response to an occurrence, the timing of which could not be foreseen, and the requirement would unreasonably restrict free speech.

J. Other Clarifications

Other clarifications of the Ordinance include the following:

- Section 13.40.020(L) has been added to define “Event” as it is defined elsewhere in the BMC, in addition to any program, performance, or presentation, in order to make clear that an amplified sound permit is required for all such outdoor events as stated in Section 13.40.100.
- Section 13.40.020(T) has been revised to clarify that a “NCO” is a noise control officer or other authorized agent authorized to enforce the ordinance, whereas “*the* NCO” (the noise control *office*) has been re-named the Environmental Health Division or EHD under Section 13.40.020(K).
- Section 13.40.030(A) has been revised to clarify that the exemption for public speaking in the public right-of-way is for *non-amplified* sound, since permits are required for amplified sound at an event.
- Section 13.40.100(B) has been revised to reflect the current administrative conditions placed on amplified sound permits.
- Section 13.40.100(C) has been added to provide that an applicant may be required to distribute flyers in advance of an event with amplified sound notifying the affected residents and businesses.
- Section 13.40.100(D) has been added to clarify that an amplified sound permit may be revoked on the spot by a NCO after a warning, if the conditions of the permit are still being violated.
- Section 13.40.100(E) has been added to clarify that a violation of a condition of an amplified sound permit is a violation of the CNO.
- Section 13.40.100(F) has been added to clarify that the EHD may add additional administrative regulations to implement Section 13.40.100 regarding amplified sound permits.

K. Reference To Resolution For A Fee Schedule

Section 13.40.130 has been added to make clear that the fee schedule for the CNO will be set by Council Resolution and that fee waivers for indigent applicants are available.

ALTERNATIVE ACTIONS CONSIDERED

Take no action relative to the Community Noise Ordinance.

CONTACT PERSON

Manuel M. Ramirez, Environmental Health Manager, 981-5261

Attachments:

1. Ordinance Amending BMC Chapter 13.40 (strike-out version)
2. Ordinance Amending BMC Chapter 13.40 (clean version)

ORDINANCE NO. – N.S.

AMENDING CHAPTER 13.40 OF THE BERKELEY MUNICIPAL CODE, REGULATING
COMMUNITY NOISE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Sections:

- 13.40.010 Purpose and intent.
- 13.40.020 Definitions.
- 13.40.030 General noise regulations.
- 13.40.040 Noise measurement procedure.
- 13.40.050 Exterior noise standards.
- 13.40.060 Interior noise standards.
- 13.40.070 Prohibited acts.
- 13.40.080 Special provisions--Exemptions.
- 13.40.090 Issuance of variances by the NCO.
- 13.40.100 Permits--Outdoor amplified sound.
- 13.40.110 Permits--Indoor amplified sound.
- [13.40.115 Permissible levels for entertainment establishments.](#)
- 13.40.120 Appeals.
- [13.40.130 Fees.](#)

*For advertising regulations generally, see Ch. 9.08 of this code.

Section 1. Section 13.40.010 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.010 Purpose and intent.

The Council finds and determines that:

- A. Certain sound levels and vibrations are detrimental to the public health, welfare, safety, and quality of life, and are contrary to the public interest;
- B. Every person is entitled to an environment in which the noise is not detrimental to his or her life, quality of life, health, or enjoyment of property;
- C. The making and creating of disturbing, excessive, or offensive noises within the jurisdictional limits of the City is a condition that has persisted, and the level and frequency of occurrences of such noises continues to increase;
- D. The public health, comfort, convenience, safety, welfare, prosperity, peace, and quiet of the City and its inhabitants will be promoted by maintaining quiet in those areas which exhibit low sound levels and by reducing noise in those areas within the City where sound levels are above acceptable values. (Ord. 5500-NS § 1 (part), 1982)

Section 2. Section 13.40.020 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.020 Definitions.

A. Terminology: All terminology used in this ~~C~~chapter, not defined below, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

B. "A-weighted sound level" means the sound level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

C. "Ambient noise level" means the composite of noise from all sources near and far. In this context, the ambient noise level constitutes the normal or existing level of environmental noise at a given location, minus the source which is the subject of enforcement.

D. "Amplified sound" means any sound created by the use of sound amplifying equipment.

E. "Commercial area" means [those parcels within zoning districts specified as commercial \(C-1, C-2, C-3, C-N, C-NS, C-SA, C-SO, C-T, and C-W\) in the "Official Zoning Map" created by Ordinance No 6478-N.S., or as subsequently amended.](#)~~any commercial area as defined in the City of Berkeley Ordinance No. 3018-N.S.~~

F. "Construction" means any site preparation, assembly, erection, substantial repair, alteration, or similar action, for or of public or private rights-of-way, structures, utilities or similar property.

G. "Cumulative period" means an additive period of time composed of individual time segments which may be continuous or interrupted.

H. "Decibel (dB)" means a unit of measurement which indicates the relative intensity of a sound. It is equal to twenty times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is twenty micropascals.

I. "Demolition" means any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

~~J.~~ J. "Emergency work or action" means work or action made necessary to restore property to a safe condition after a public calamity, or work required to protect persons or property from imminent exposure to danger or damage, or work by public or private utilities to restore utility service.

~~K.~~ K. "EHD" means the Environmental Health Division or noise control office.

~~L.~~ L. "Event" means a program, performance, or presentation intended to draw spectators, including but not limited to a Street Event or Park Event as defined by Section 13.44.020(G) and Section 6.46.020(B and D), respectively.

~~M.~~ M. "Fixed noise source" means a stationary device which creates sounds while fixed or motionless, including but not limited to, residential, agricultural, industrial and commercial machinery and equipment, pumps, fans, compressors, air conditioners, and refrigeration equipment.

~~N.~~ N. "Impulsive sound" means sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts, and the discharge of firearms.

~~O.~~ O. "Industrial area" means those parcels within zoning districts specified as industrial (M, MM, MULI, and MUR) in the "Official Zoning Map" created by

Ordinance No 6478-N.S., or as subsequently amended. ~~any industrial or manufacturing area as defined in City of Berkeley Ordinance No. 3018-N.S.~~

PN. "Intrusive noise" means that noise which intrudes over and above the existing ambient noise at a given location. The relative intrusiveness of a sound depends upon its amplitude, duration, frequency and time of occurrence, and tonal or informational content as well as the prevailing ambient noise level.

QQ. "Mobile noise source" means any noise source other than a fixed noise source.

RP. "Motor vehicle" means and shall include any and all self-propelled vehicles as defined in the California Motor Vehicle Code, including all on-highway type motor vehicles subject to registration under said Code, and all off-highway type motor vehicles subject to identification under said Code.

SQ. ~~"Noise control officer(r) ("NCO" means a noise control officer(r) or other authorized agent shall be designated by the City Manager, and the NCO or a representative shall be empowered~~ to enforce the provisions of this Chapter.

TR. "Noise Disturbance" means any sound which is determined to violates the ~~factors and quantitative standards of~~ Sections 13.40.030, ~~or~~ 13.40.050, ~~or~~ 13.40.060, or 13.40.070.

US. "Noise zone" means any defined areas or regions of a generally consistent land use wherein the ambient noise levels are within a range of five dB. (Typically, all sites within any given noise zone will be of comparable proximity to major noise sources.)

VF. "Person" means any individual, association, ~~or~~ partnership, institution or corporation, and includes any agent, officer, employee, department, agency or instrumentality of a state or any political subdivision of a state.

WU. "Powered model vehicle" means any self-propelled, airborne, waterborne, or land-borne plane, vessel, or vehicle, which is not designed to carry persons, including but not limited to, any model airplane, boat, car, or rocket.

XV. "Public right-of-way" means any street, avenue, boulevard, highway, sidewalk or alley or similar place which is owned or controlled by a governmental entity.

YW. "Public space" means any real property or structures thereon which are owned or controlled by a governmental entity.

ZX. "Pure tone" means any sound which can be judged as audible as a single pitch or a set of single pitches by a NCO~~the noise control officer.~~

AA¥. "Real property boundary" means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including inter-building real property divisions such as walls and fences.

BB-Z. "Residential area" means those parcels within zoning districts specified as residential (R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, and ES-R) in the "Official Zoning Map" created by Ordinance No 6478-N.S., or as subsequently amended. ~~residential area as defined in City of Berkeley Ordinance No. 3018-N.S.~~

CCAA. "Sound amplifying equipment" means any electronic device for the amplification of the human voice, music, or any other sound, excluding standard automobile radios when used and heard only by the occupants of the vehicle in

which the radio is installed, and, as used in this Cchapter, warning devices on authorized emergency vehicles or horns or other warning devices on any vehicle used only for traffic safety purposes.

DDBB. "Sound level" means the level of sound as measured in decibels.

EECC. "Sound level meter" means a sound measuring instrument meeting American National Standard Institute's Standard S1.41971 or most recent revision thereof for Type 1 or Type 2 sound level meters or an instrument and the associated recording and analyzing equipment which provide equivalent data. (Ord. 5500-NS § 1 (part), 1982)

Section 3. Section 13.40.030 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.030 General noise regulations.

A. Notwithstanding any other provisions of this Cchapter, and in addition thereto, it shall be unlawful for any person to willfully or negligently make or continue, or cause to be made or continue, any loud, unnecessary, or unusual noise which disturbs the peace and quiet of any neighborhood or which causes any discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area. Non-commercial non-amplified public speaking and public assembly activities conducted on any public space or public right-of-way shall be exempt from the operation of this section.

B. Any violation of this Chapter may be charged as either a misdemeanor or an infraction as set forth in BMC Chapter 1.20. The violation of any of the provisions of this Cchapter is declared to be a public nuisance and may also be abated as provided in Sections 11.40.010 through 11.44.030 of the Berkeley Municipal Code.

C. If it is determined by the responding agency that a sound level violates this Chapter in excess of the levels prescribed by this chapter exists, the following procedures shall be followed, except as otherwise provided in Section 13.40.070:

1. A written-warning shall be issued by a NCO the noise control office(r) or his agent to the person responsible for the violation event causing the disturbance.
2. If the disturbance violation persists for more than fifteen minutes following the warning notice, or recurs within an eight-hour period, then the person responsible for the event causing the disturbance shall be guilty of a violation of this Cchapter. Any such violation shall be an infraction.

D. The factors which will be considered in determining whether a violation of the provisions of this Cchapter exists shall include, but not be limited to, the following:

1. The sound level of the alleged objectionable noise.
2. The sound level of the ambient noise.
3. The proximity of the noise to residential sleeping facilities.
4. The nature and zoning of the area within which the noise emanates.
5. The number of persons affected by the noise source.
6. The time of day or night the noise occurs.
7. The duration of the noise, and its tonal quality or musical content.

E. If a NCO investigates a noise complaint and finds the noise level to have been mitigated to the extent technically and economically feasible, the EHD may

deem the noise level to be in compliance with this Chapter. Such determination shall be final. (Ord. 5500-NS § 1 (part), 1982)

Section 4. Section 13.40.040 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.040 Noise measurement procedure.

Upon receipt of two non-anonymous citizen noise complaints in a Commercial Area or regarding any Event, or upon receipt of one non-anonymous citizen noise complaint in all other areas, a NCO or other authorized agent of the City Manager~~a complaint from a citizen, the noise control office(r) or his agent~~, equipped with a sound level meter, shall investigate the complaint. Except as otherwise provided in this Chapter, ~~t~~The investigation shall consist of a measurement and the gathering of data to adequately define the noise problem and shall include the following:

A. Non-acoustic data:

1. Type of noise source.
2. Location of noise source relative to complainant's property.
3. Time period during which noise source is considered by complainant to be intrusive.

4. Total duration of noise produced by noise source.

5. Date and time of noise measurement survey.

B. Noise measurement procedure. Utilizing the "A" weighting scale of sound level meter and the "slow" meter response, ~~the a NCO~~noise control office(r) or his agent shall measure the sound level ~~at any point~~ on the receiver's property. (Ord. 5500-NS § 1 (part), 1982)

Section 5. Section 13.40.050 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.050 Exterior noise standards.

A. Maximum permissible sound levels shall be determined by the zoning district of the property subject to the noise, not the property from which the noise originates, by receiving land use.

1. The noise standards for the various categories of land use ~~identified by the noise control office(r) as presented~~ in Table 13.40-1 or 13.40-2 shall, unless otherwise specifically indicated in other codes, apply to all such property within a designated zone.

2. No person shall operate or cause to be operated, any source of sound at any location within the incorporated City or allow the creation of any noise on property owned, leased, occupied or otherwise controlled by such person, which causes the sound level when measured on any other property, ~~either incorporated or unincorporated,~~ to exceed:

a. The noise standard for that land use as specified in Table 13.40-1 for a cumulative period of more than 30~~thirty~~ minutes in any hour; or

b. The noise standard for that land use as specified in Table 13.40-1 plus 5~~five~~ dBA for a cumulative period of more than 15~~fifteen~~ minutes in any hour; or

- c. The noise standard for that land use as specified in Table 13.40-1 plus 10~~ten~~ dBA for a cumulative period of more than 5~~five~~ minutes in any hour; or
- d. The noise standard for that land use as specified in Table 13.40-1 plus 15~~fifteen~~ dBA for a cumulative period of more than 1~~one~~ minute in any hour; or
- e. The noise standard for that land use as specified in Table 13.40-1 plus 20~~twenty~~ dBA or the maximum measured ambient level, for any period of time.

Table 13.40-1

EXTERIOR NOISE LIMITS

(Levels not to be exceeded more than 30 minutes any hour)

<u>Zoning District</u>	<u>Time Period</u>	<u>Noise Level (dBA)</u>
<u>R-1, R-2, R-1A, R-2A, and ESR</u>	<u>7:00 a.m. - 10:00 p.m.</u>	<u>55</u>
	<u>10:00 p.m. - 7:00 a.m.</u>	<u>45</u>
<u>R-3 and above</u>	<u>7:00 a.m. - 10:00 p.m.</u>	<u>60</u>
	<u>10:00 p.m. - 7:00 a.m.</u>	<u>55</u>
<u>Commercial</u>	<u>7:00 a.m. - 10:00 p.m.</u>	<u>65</u>
	<u>10:00 p.m. - 7:00 a.m.</u>	<u>60</u>
<u>Industry</u>	<u>Anytime</u>	<u>70</u>

3. If the measured ambient noise level is greater than the level differs from that permissible within any of the first four noise limit categories above, the sound level when measured on any other property shall not exceed: allowable noise exposure standard shall be the ambient noise level.

- a. The ambient noise level for a cumulative period of more than 30 minutes in any hour; or
- b. The ambient noise level plus 5 dBA for a cumulative period of more than 15 minutes in any hour; or
- c. The ambient noise level plus 10 dBA for a cumulative period of more than 5 minutes in any hour; or
- d. The ambient noise level plus 15 dBA for a cumulative period of more than 1 minute in any hour; or
- e. The ambient noise level plus 20 dBA for any period of time.

4. If the measurement location is on a boundary between two different zones, the sound level limit applicable to the quieter noise zone shall apply.

5. If possible, the ambient noise level may be measured at the same location along the property line utilized in Section 13.40.050A.2- with the alleged offending noise source inoperative. If the intruding noise source is continuous and cannot reasonably be discontinued or stopped for a time period whereby the ambient noise level can be measured, the ambient noise level may be determined by traveling away from the noise source to a point where a steady state decibel reading is

achieved. If this test is not possible, the noise level measured while the source is in operation shall be compared directly to the noise level standards.

~~B. Correction for character of sound. In the event the alleged offensive noise, as judged by the noise control office(r) or his agent, contains a steady, pure tone such as a whine, screech, or hum, or is an impulsive sound such as hammering or riveting, or contains music or speech, the standard limits set forth in Table 13.40-1 shall be reduced by five dB.~~

Table 13.40-1

EXTERIOR NOISE LIMITS

~~(Levels not to be exceeded more than thirty minutes any hour)~~

Zone	Time Period	Noise Level (dBA)
R-1, R-2	7:00 a.m. - 10:00 p.m.	55
	10:00 p.m. - 7:00 a.m.	45
R-3 and above	7:00 a.m. - 10:00 p.m.	60
	10:00 p.m. - 7:00 a.m.	55
Commercial	7:00 a.m. - 10:00 p.m.	65
	10:00 p.m. - 7:00 a.m.	60
Industry	Anytime	70

The classification of additional different areas of the community not listed in Table 13.40-1 in terms of environmental noise zones shall be determined by the EHD noise control office(r). ~~Additional area classifications should be used as appropriate to reflect both lower and higher existing ambient noise levels than those shown.~~ Industrial noise limits are intended primarily for use at the boundary of industrial zones rather than for noise reduction within the zone. (Ord. 5500-NS § 1 (part), 1982)

Section 6. Section 13.40.060 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.060 Interior noise standards.

A. Maximum permissible dwelling interior sound levels.

1. The interior noise standards for multi-family residential dwellings as presented in Table 13.40-2 shall apply, unless otherwise specifically indicated in other codes, within all such dwellings with windows in their normal seasonal configuration.

Table 13.40-2

INTERIOR NOISE LIMITS

<u>Zoneing District</u>	<u>Time Interval</u>	<u>Allowable Interior Noise Level (dBA)</u>
All	10:00 p.m. - 7:00 a.m. 7:00 a.m. - 10:00 p.m.	40 45

2. No person shall operate or cause to be operated within a multi-family dwelling unit, any source of sound or allow the creation of any noise which causes the sound level when measured inside a neighboring receiving-dwelling unit to exceed:

- a. The noise standard as specified in Table 13.40-2 for a cumulative period of more than five minutes in any hour; or
- b. The noise standard as specified in Table 13.40-2 plus five dBA for a cumulative period of more than one minute in any hour; or
- c. The noise standard as specified in Table 13.40-2 plus ten dBA or the maximum measured ambient, for any period of time.

3. If the measured ambient noise level is greater than the level differs from that permissible within any of the noise limit categories above, the sound level when measured on the other property shall not exceed allowable noise exposure standard shall be the ambient noise level.

- a. The ambient noise level for a cumulative period of more than 5 minutes in any hour; or
- b. The ambient noise level plus 5 dBA for a cumulative period of more than 1 minute in any hour; or
- c. The ambient noise level plus 10 dBA for any period of time.

~~B. Correction for character of sound. In the event the alleged offensive noise, as judged by the noise control office(r) or his agent, contains a steady, pure tone such as a whine, screech, or hum, or is an impulsive sound such as hammering or riveting, or contains music or speech the standard limits set forth in Table 13.40-2 shall be reduced by five dB. (Ord. 5500-NS § 1 (part), 1982)~~

Section 7. Section 13.40.070 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.070 Prohibited acts.

Only the warning in Section 13.40.030(C) (the warning procedure) must be given and disobeyed for a violation of subsection A, or subsection B (3) (raucous yelling), (4) (street sales), (5) (animal noise), or (8) (vibration) to arise.

Both the warning procedure and the measurement procedure in Section 13.40.040 (the measurement procedure) must be conducted for a violation of subsection B (1) (sound devices), (2) (amplified sound), (6) (loading/unloading), (7) (construction/demolition), (9) (model vehicles), or (11) (power tools) to arise.

Neither the warning procedure nor the measurement procedure must be conducted for a violation of subsection B (10) (emergency tests), (13) (tampering), or (14) (gas leaf blowers) to arise.

Only the measurement procedure must be conducted for a violation of subsection B (12) (loud clubs without signs) to arise.

A. Noise ~~D~~isturbances prohibited. No person shall unnecessarily make, continue, or cause to be made or continued, any ~~N~~oise ~~D~~isturbance prohibited by Section 13.40.030(A) that is not otherwise specifically listed in subsection B of this Section.

B. Specific prohibitions. The following acts, and the causing or permitting thereof, are declared to be in violation of this ~~e~~Chapter:

1. Radios, television sets, musical instruments and similar devices. ~~Operating, playing or permitting the operation or playing of any radio, television set, phonograph, drum, musical instrument, or similar device which produces or reproduces sound in such a manner as to create a noise disturbance, or at any time to~~ violate the provisions of Sections 13.40.050 or 13.40.060, except for sound levels activities for which a variance or permit has been issued by the EHDNCO.

2. Loudspeakers (amplified sound) not associated with an Event. ~~Using or operating for any purpose any loudspeaker, loudspeaker system, or similar device, such that the sound therefrom creates a noise disturbance or at any time~~ violates the provisions of Sections 13.40.050 or 13.40.060, except for sound levels any activity for which a variance or permit has been issued by the EHDNCO.

3. Yelling, shouting. Loud or raucous yelling, shouting, whistling, or singing so as to cause a ~~N~~oise ~~D~~isturbance is hereby prohibited.

4. Street sales. The solicitation, sale, or advertising of any product or service by shouting or outcry within any residential or commercial area or noise sensitive zone of the City except by variance issued by the EHDNCO. The provisions of this ~~subdivision section~~ shall not be construed to prohibit the selling by outcry of merchandise, food, or beverages at licensed sporting events, parades, fairs, circuses, or other similar licensed public entertainment Events for which a permit has been issued.

5. Animals. ~~Keeping or maintaining, or permitting to be kept or maintained upon any premises owned, occupied, or controlled by any person of any animal or animals, which by any frequent or long continued noise shall cause annoyance or discomfort to two or more reasonable persons of normal sensitiveness who reside in separate residences (including apartments and condominiums). However, at the~~ NCO or his or her agent may proceed on the basis of a complaint of only one person, if circumstances are determined to exist whereby a ~~N~~oise ~~D~~isturbance caused by an animal affects only one individual. ~~Any noise which is audible continuously for 10~~ ten minutes or intermittently for 30 ~~thirty~~ minutes shall be prima facie evidence of such annoyance or discomfort. Factors which can be used to evaluate excessive animal noise include, but are not limited to, (a) pitch,; (b) pattern,; ~~(c)~~ and ~~(cd)~~ frequency of occurrence. This subsection may be enforced by an Animal Control Officer.

6. Loading and unloading. ~~Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, or similar objects between the hours of 10:00~~ ten p.m. and 7:00 ~~seven~~ a.m. such that the sound therefrom in such a manner as to cause a noise disturbance across a residential real property line ~~or at any time to~~ violates the provisions of Sections 13.40.050 or 13.40.060.

7. Construction/demolition.

a. Operating or causing the operation of any tools or equipment used in construction, drilling, repair, alteration, or demolition work before 7:00 a.m. on a weekday (or before 9:00 a.m. on a weekend or holiday) or after 7:00 p.m. on a weekday (or after 8:00 p.m. on a weekend or holiday) between weekday hours of seven p.m. and seven a.m., or eight p.m. and nine a.m. on weekends or holidays such that the sound therefrom creates a noise disturbance across a residential or commercial real property line violates Section 13.40.050 or 13.40.060, except for emergency work of public service utilities or by variance issued by the EHDNCO. (This section shall not apply to the use of domestic power tools as specified in Section 13.40.070, subsection B.11.)

b. Noise restrictions at affected properties. Where technically and economically feasible, construction activities shall be conducted in such a manner that the maximum sound levels at affected properties will not exceed those listed in the following schedule:

AT RESIDENTIAL PROPERTIES: Mobile Equipment. Maximum sound levels for nonscheduled, intermittent, short-term operation (less than 10ten days) of mobile equipment:

Table 13.40-3

	R-1, R-2 Residential	R-3 and above Multi-Family Residential	Commercial/Industrial
<u>WeekdaysDaily</u> , 7:00 a.m. to 7:00 p.m.	75_dBA	80 dBA	85 dBA
Weekends, 9:00 a.m. to 8:00 p.m. and legal holidays	60	65	70

Stationary Equipment. Maximum sound levels for repetitively scheduled and relatively long term operation (period of 10ten days or more) of stationary equipment:

Table 13.40-4

	R-1, R-2 Residential	R-3 and above Multi-Family Residential	Commercial/Industrial
<u>WeekdaysDaily</u> , 7:00 a.m. to 7:00 p.m.	60 dBA	65 dBA	70 dBA
Weekends, 9:00 a.m. to 8:00 p.m. and legal holidays	50	55	60

8. Vibration. Operating or permitting the operation of any device that creates a vibration, which annoys or disturbs at least two or more reasonable persons of normal sensitiveness who reside in separate residences (including apartments and condominiums) at or beyond the property boundary of the source, if on private property, or at least 150one hundred fifty feet (46forty-six meters) from the source, if on a public space or public right-of-way.

9. Powered model vehicles. Operating or permitting the operation of powered model vehicles such that the sound therefromso as to create a noise disturbance across

a residential or commercial real property line ~~or at any time to violate~~ the provisions of Sections [13.40.050](#) or [13.40.060](#).

10. Emergency signaling devices.

a. The intentional sounding or permitting the sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle, or similar stationary emergency signaling device, except for emergency purposes or for testing, as provided in subparagraph b. below.

b. (i) Testing of a stationary emergency signaling device shall not occur before ~~7:00seven~~ a.m. or after ~~7:00seven~~ p.m. Any such testing shall use only the minimum cycle test time. In no case shall such test time exceed ~~60sixty~~ seconds.

(ii) Testing of the complete emergency signaling system, including the functioning of the signaling device, and the personnel response to the signaling device, shall not occur more than once in each calendar month. Such testing shall not occur before ~~7:00seven~~ a.m. or after ~~10:00ten~~ p.m. The time limit specified in subparagraph b.-(i) shall not apply to such complete system testing.

c. Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm, unless such alarm is terminated within ~~15fifteen~~ minutes of any single security violation or false alarm.

11. Domestic power tools, machinery.

a. Operating or permitting the operation of any mechanically powered saw, sander, drill, grinder, lawn or garden tool, or similar tool ~~before 7:00 a.m. on a weekday (or before 9:00 a.m. on a weekend or holiday) or after 7:00 p.m. on a weekday (or after 8:00 p.m. on a weekend or holiday) between ten p.m. and seven a.m. on weekdays (or eight p.m. and nine a.m. on weekends and legal holidays), so as to create a noise disturbance such that the sound therefrom~~ across a residential or commercial real property line ~~violates Sections 13.40.050 or 13.40.060~~.

b. Any motor, machinery, pump, such as swimming pool equipment, etc., shall be sufficiently enclosed or muffled and maintained so as not to create a ~~N~~noise ~~D~~disturbance in accordance with Sections [13.40.050](#) or [13.40.060](#).

12. Places of public entertainment. Operating or permitting the operation or playing of any loudspeaker, musical instrument, motorized racing vehicle, or other source of sound in any place of public entertainment that exceeds ~~95ninety-five~~ dBA as read on the scale of a sound level meter at any point normally occupied by a customer, without a conspicuous and legible sign stating: "WARNING! SOUND LEVELS WITHIN MAY CAUSE HEARING IMPAIRMENT."

13. Tampering. The removal or rendering inoperative, other than for purposes of maintenance, repair, or replacement, of any noise control device or element thereof, of any product required to meet specified noise emission limits under federal, state, or local law, and the use of said product after its noise control device has been removed or rendered inoperative, other than for purposes of maintenance, repair, or replacement.

14. Notwithstanding ~~s~~subsection B.11 of this section, it shall be unlawful for any person, including any City employee, to operate any portable machine powered with a gasoline engine used to blow leaves, dirt, and other debris off sidewalks, driveways, lawns, or other surfaces within the City limits.

a. Notice of this prohibition shall be posted in all stores selling such gasoline powered machines within the City limits. (Ord. 6026-NS § 1, 1990: Ord. 5500-NS § 1 (part), 1982)

Section 8. Section 13.40.080 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.080 Special provisions--Exemptions.

The following are exempt from the provisions of this Chapter:

A. Emergency exemption. The provisions of this Chapter shall not apply to: (a) the emission of sound for the purpose of alerting persons to the existence of an emergency, or (b) the emission of sound in the performance of emergency work.

B. Warning devices. Warning devices necessary for the protection of public safety, as for example, police, fire and ambulance sirens, and train horns, shall be exempted from the provisions of this Chapter.

C. If a permit for an Event allows sound levels that are louder than the limits specified in Section 13.40.050 or 13.40.060, or time periods for sound levels that are longer than the limits specified in this Chapter, then the sound levels and time periods in the permit shall apply.

D. There may be instances, especially in existing older buildings, where compliance with the noise standards set forth in this Chapter may not be economically or technically feasible, and therefore, the EHD may grant administrative exceptions to those standards on a case-by-case basis. (Ord. 5500-NS § 1 (part), 1982)

Section 9. Section 13.40.090 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.090 Issuance of variances by the NCO.

The creation of any noise which exceeds the standards specified in this Chapter that is not otherwise exempt requires the issuance of a variance ~~or permit~~. The EHDNCO shall evaluate all applications for ~~permits or~~ variances from the requirements of this Chapter and may grant said variances with respect to time for compliance, subject to such terms, conditions, and requirements as ~~he or she~~ it may deem reasonable to achieving compliance with the provisions of this Chapter. Each such variance shall set forth in detail the approved method of achieving compliance and a time schedule for its accomplishment. If in the judgment of the EHDNCO the time for compliance cannot be reasonably determined, a variance permit to cause the noise may be issued for a period not to exceed three years. In determining the reasonableness of the terms of any proposed permit or variance, the EHD said NCO shall consider the magnitude of nuisance caused by the offensive noise, the uses of property within the area of impingement by the noise, operations carried on under existing nonconforming rights or conditional use permits or zoning variances, the time factors related to study, design, financing and construction of remedial work, the economic factors related to age and useful life of the equipment and the general public interest and welfare.

~~—A nominal fee shall be charged to each applicant for processing permits or variances. Fee schedules shall be approved by council resolution. A report of permits and variances shall be prepared monthly and be available for public review.~~

A. Any person seeking a variance pursuant to this section shall file an application with the EHDNCO. The application shall contain information which demonstrates that

bringing the source of sound or activity for which the variance is sought into compliance with this Cchapter would constitute an unreasonable hardship on the applicant, or the community, or on other persons.

A separate application shall be filed for each noise source; provided, however, that several mobile sources are under common ownership, or several fixed sources on a single property may be combined into one application. Notice of an application for variance shall be posted for 12 working days in the area of the proposed variance, which notice shall state the last the day to file an objection to the variance. published according to Berkeley Ordinance No. 3018-N.S. If A-any individual who claims to be adversely affected by allowance of the variance may files a written objection by the deadline provided in the notice statement with the EHDNCO containing any information to support his claim. If at any time the NCO finds that a sufficient controversy exists regarding an application, a public hearing will be held. objecting to the proposed variance, the EHD will facilitate discussion with the applicant to mitigate that individual's concerns.- Any late written objections shall be taken into consideration for future events.

B. In determining whether to grant or deny the application, the EHDNCO shall balance the hardship on the applicant, the community, and other persons of not granting variance against the adverse impact on the health, safety, and welfare of persons affected, and any other adverse impacts of granting the variance. Applicants for variances and persons contesting variances may be required to submit such information as the EHDNCO may reasonably require. In granting or denying an application, the EHDNCO shall keep on public file a copy of the decision and the reasons for denying or granting the variance.

C. Variances shall be granted by notice to the applicant containing all necessary conditions, including a time limit on the permitted activity. The variance shall not become effective until all conditions are agreed to by the applicant. Non-compliance with any condition of the variance shall terminate the variance and subject the person holding it to those provisions of this Cchapter. (Ord. 5500-NS § 1 (part), 1982)

Section 10. Section 13.40.100 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.100 Permits--Outdoor amplified sound.

A. Applications. The permit process is intended to acquaint applicants with the provisions of this chapter. Any person(s) or organization(s) wishing to stage a one-time event employing the use of amplified sound outdoors for an Eevent must obtain a shall apply to the NCO for a one-time permit for the that event amplified sound from the EHD. The NCO shall publicize the availability of permits for any one location for at least six weeks commencing January 1 of each year. The NCO, in In evaluating the application, the EHD shall consider the following factors in addition to additional criteria the EHD may adopt:

A.—Factors:-

1. Time and duration (if any) of Eevent.
2. Location or route of Eevent.
3. Anticipated number of people in attendance.

4. Number of people to be affected by the Eevent.
5. Magnitude of noise.
6. Provisions of the organization to deal with complaints received.
7. Provisions of the organization for admitting people to the event.
- 8. Provisions of the organization for crowd control, disabled access, pedestrian access, and vehicle access.
9. Past compliance and non-compliance with the provisions of this eChapter and previous permits granted to the organization.
10. That on private property there have been no more than seven permits for outdoor or indoor amplified sound granted for the location applied for within that calendar year or any such permit granted for an event taking place at the location within 30thirty days of the requested date.
11. That on public property no more than one permit be issued for the Location in any one day.

This application will be due toin the EHDNCO no less than 30thirty days before the intended date of the Eevent, unless the proposed Event is in response to an occurrence whose timing did not reasonably allow the applicant to file a timely application and the imposition of this time limitation would place an unreasonable restriction on free speech. An application must be on a form provided by the City and shall include the names, addresses, phone numbers, and photo identification of all persons who are or will be responsible for the conduct of the Event. The application will be denied if the information contained in the application, including supplemental information, if any, is found to be false in any material respect, the applicant fails to meet the City requirements for a permit, or Factors 10 or 11 above apply.

B. Contents of Permits and Conditions.

An amplified sound permit may impose reasonable time, place, and manner conditions such that the proposed sound will not pose a traffic or safety hazard, interfere with fire or police protection services, or unreasonably interfere with pedestrian or vehicular use of the Public right-of-way. Additionally, aAll events for which a one-time permit is granted amplified sound permits shallwill be subject to the following restrictionsconditions:

1. The only amplified sounds permitted shall be either music or human speech, or both;
2. Sound amplification equipment on private property shall not be utilized in any location for a period in excess of 4four hours in any 24-twenty-four hour period;
3. Sound amplifying equipment equipment when associated with an approved Event permit shall be used upon public property for the duration of the Event and only between the hours of 10:00ten a.m. and 8:00eight p.m., except as may be permitted pursuant to other provisions of this Code, such as Section 13.40.080, and upon private property only between the hours of 10:00ten a.m. and 10:00ten p.m.;
4. Speakers for outdoor sound amplification equipment shall be directed, to the extent feasible, toward open or unoccupied space and away from residentially occupied property.;
- 5a. The sound emanating from sound amplifying equipment on private property shall not exceed 15fifteen dBA above the ambient noise level measured at the exterior

of any dwelling unit located on any ~~other~~ residential property; and in no case to exceed ~~65sixty-five~~ dBA at the exterior of any such building;:-

5b. On public property such sound may not exceed ~~15ten~~ dBA above ~~the~~ ambient ~~ce~~ noise level measured at any point ~~50fifty~~ feet from the sound amplifying equipment. The ~~EHDNCO~~ may allow higher limits upon a showing that an expected audience cannot be effectively communicated to within the above limits;:-

6. In any event, the volume of sound shall be so controlled that it will not be unreasonably loud, raucous, jarring, disturbing or a nuisance to reasonable persons of normal sensitiveness within the area of audibility;:-

7. ~~Approval of a permit may be conditioned upon s~~Such other terms as may be necessary to insure compliance with the provisions ~~and spirit of this of this~~ Chapter;:-

8. The organization must provide the ~~EHDNCO~~ with the names of two people who will be in attendance at all times and have the authority to deal with ~~athe~~ NCO or the police in response to complaints and/or violations;:-

9. ~~The permittee shall carry the permit during the proposed Event and show it, upon demand, to any City employee authorized to enforce this Chapter;:-~~

10. ~~All sound equipment must be kept in locations that comply with the location and size requirements of Section 14.48.170.~~

C. ~~The EHD may require the applicant to distribute flyers throughout the surrounding area in advance of the proposed Event, notifying the affected residents and business people of the proposed Event.~~

D. ~~A NCO may summarily terminate the permit after a warning, if the activity for which the permit is issued results in violations of any applicable laws or regulations.~~

E. ~~A violation of any permit conditions is a violation of this Chapter.~~

F. ~~The EHD may issue additional regulations to further the purposes of this Section.~~ (Ord. 5500-NS § 1 (part), 1982)

Section 11. Section 13.40.110 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.110 Permits--Indoor amplified sound.

~~No permit is required f~~For indoor amplified sound, ~~and acoustic sound. Any private party a person or organization~~ may apply for a permit ~~from the EHD~~ pursuant to Section 13.40.100 of this ~~C~~chapter, if sound levels ~~will are expected to~~ violate the standards set forth in Sections 13.40.030, ~~or~~ 13.40.050 or 13.40.060; provided, however, that such a permit will be subject to all of the ~~applicable~~ conditions listed in Section 13.40.100.

All indoor amplified sound will otherwise be subject to the sound levels stated in Sections 13.40.030, 13.40.050 and 13.40.060.

If there is reason to believe that any indoor amplified sound may be of a prolonged or disturbing nature, the person(s) or organization(s) responsible shall notify all residents within a ~~50-fifty~~ foot area at least ~~5five~~ days prior to the incident of the time and date of the activity and whom to contact in case of a complaint. (Ord. 5500-NS § 1 (part), 1982)

Section 12. Section 13.40.115 of the Berkeley Municipal Code is added to read as follows:

Section 13.40.115 Permissible levels for entertainment establishments.

An entertainment establishment may exceed the sound level limits in this Chapter by no more than five decibels higher than either the applicable standard or the ambient noise level, whichever is higher, and may deviate from the time restrictions set forth in this Chapter, if the applicable Use Permit so provides.

Section 13. Section 13.40.120 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.120 Appeals.

Any person directly affected by the noise and/or the applicant who is aggrieved by approval or disapproval of a variance or permit by the EHDNCO may appeal in writing to the City Manager no less than 72 hours prior to the anticipated exercise of the variance or permit. The City Manager shall consider the appeal as soon as possible. The City Manager shall provide written notice of his or her decision to the appellant. The City Manager's decision shall be final. Community Health Advisory Committee which shall be the appeals board for one year. At the end of that year the committee will review the appeals process and make recommendations to the City Council.

In the case of a permit denial, the board shall meet as soon as feasibly practical in order to consider the matter. All other appeals shall be scheduled in the board's regular course of business. The board may take action as set forth in Section 13.40.090 of this chapter, subject to appeal to the City Council. (Ord. 5500-NS § 1 (part), 1982)

Section 14. Section 13.40.130 of the Berkeley Municipal Code is added to read as follows:

Section 13.40.130 Fees.

A. The City Council may establish by resolution the fees that shall be charged for permits issued under this Chapter.

B. Any indigent person who cannot afford to pay the permit fees may apply for a fee waiver accompanied by such relevant information and documentation as is reasonably necessary to verify indigence. For purposes of this Section, an indigent person is one who is eligible for County relief pursuant to Sections 17000 et seq. of the Welfare and Institutions Code.

C. This section shall not limit the EHD from recovering all costs associated with sound surveys and complaint investigations pursuant to the fee resolution.

Section 14. Copies of this Bill shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. -N.S.

AMENDING CHAPTER 13.40 OF THE BERKELEY MUNICIPAL CODE, REGULATING
COMMUNITY NOISE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Sections:

- 13.40.010 Purpose and intent.
- 13.40.020 Definitions.
- 13.40.030 General noise regulations.
- 13.40.040 Noise measurement procedure.
- 13.40.050 Exterior noise standards.
- 13.40.060 Interior noise standards.
- 13.40.070 Prohibited acts.
- 13.40.080 Special provisions--Exemptions.
- 13.40.090 Issuance of variances by the NCO.
- 13.40.100 Permits--Outdoor amplified sound.
- 13.40.110 Permits--Indoor amplified sound.
- 13.40.115 Permissible levels for entertainment establishments.
- 13.40.120 Appeals.
- 13.40.130 Fees.

*For advertising regulations generally, see Ch. 9.08 of this code.

Section 1. That Section 13.40.010 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.010 Purpose and intent.

The Council finds and determines that:

- A. Certain sound levels and vibrations are detrimental to the public health, welfare, safety, and quality of life, and are contrary to the public interest;
- B. Every person is entitled to an environment in which the noise is not detrimental to his or her life, quality of life, health, or enjoyment of property;
- C. The making and creating of disturbing, excessive, or offensive noises within the jurisdictional limits of the City is a condition that has persisted, and the level and frequency of occurrences of such noises continues to increase;
- D. The public health, comfort, convenience, safety, welfare, prosperity, peace, and quiet of the City and its inhabitants will be promoted by maintaining quiet in those areas which exhibit low sound levels and by reducing noise in those areas within the City where sound levels are above acceptable values. (Ord. 5500-NS § 1 (part), 1982)

Section 2. That Section 13.40.020 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.020 Definitions.

A. Terminology: All terminology used in this Chapter, not defined below, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

B. "A-weighted sound level" means the sound level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

C. "Ambient noise level" means the composite of noise from all sources near and far. In this context, the ambient noise level constitutes the normal or existing level of environmental noise at a given location, minus the source which is the subject of enforcement.

D. "Amplified sound" means any sound created by the use of sound amplifying equipment.

E. "Commercial Area" means those parcels within zoning districts specified as commercial (C-1, C-2, C-3, C-N, C-NS, C-SA, C-SO, C-T, and C-W) in the "Official Zoning Map" created by Ordinance No 6478-N.S., or as subsequently amended.

F. "Construction" means any site preparation, assembly, erection, substantial repair, alteration, or similar action, for or of public or private rights-of-way, structures, utilities or similar property.

G. "Cumulative period" means an additive period of time composed of individual time segments which may be continuous or interrupted.

H. "Decibel (dB)" means a unit of measurement which indicates the relative intensity of a sound. It is equal to twenty times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is twenty micropascals.

I. "Demolition" means any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

J. "Emergency work or action" means work or action made necessary to restore property to a safe condition after a public calamity, or work required to protect persons or property from imminent exposure to danger or damage, or work by public or private utilities to restore utility service.

K. "EHD" means the Environmental Health Division or noise control office.

L. "Event" means a program, performance, or presentation intended to draw spectators, including but not limited to a Street Event or Park Event as defined by Section 13.44.020(G) and Section 6.46.020(B and D), respectively.

M. "Fixed noise source" means a stationary device which creates sounds while fixed or motionless, including but not limited to, residential, agricultural, industrial and commercial machinery and equipment, pumps, fans, compressors, air conditioners, and refrigeration equipment.

N. "Impulsive sound" means sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts, and the discharge of firearms.

O. "Industrial area" means those parcels within zoning districts specified as industrial (M, MM, MULI, and MUR) in the "Official Zoning Map" created by Ordinance No 6478-N.S., or as subsequently amended.

P. "Intrusive noise" means that noise which intrudes over and above the existing ambient noise at a given location. The relative intrusiveness of a sound depends upon

its amplitude, duration, frequency and time of occurrence, and tonal or informational content as well as the prevailing ambient noise level.

Q. "Mobile noise source" means any noise source other than a fixed noise source.

R. "Motor vehicle" means and shall include any and all self-propelled vehicles as defined in the California Motor Vehicle Code, including all on-highway type motor vehicles subject to registration under said Code, and all off-highway type motor vehicles subject to identification under said Code.

S. "NCO" means a noise control officer or other authorized agent designated by the City Manager to enforce the provisions of this Chapter

T. "Noise Disturbance" means any sound which is determined to violate Section 13.40.030, 13.40.050, 13.40.060, or 13.40.070.

U. "Noise zone" means any defined areas or regions of a generally consistent land use wherein the ambient noise levels are within a range of five dB. (Typically, all sites within any given noise zone will be of comparable proximity to major noise sources.)

V. "Person" means any individual, association, partnership, institution or corporation, and includes any agent, officer, employee, department, agency or instrumentality of a state or any political subdivision of a state.

W. "Powered model vehicle" means any self-propelled, airborne, waterborne, or land-borne plane, vessel, or vehicle, which is not designed to carry persons, including but not limited to, any model airplane, boat, car, or rocket.

X. "Public right-of-way" means any street, avenue, boulevard, highway, sidewalk or alley or similar place which is owned or controlled by a governmental entity.

Y. "Public space" means any real property or structures thereon which are owned or controlled by a governmental entity.

Z. "Pure tone" means any sound which can be judged as audible as a single pitch or a set of single pitches by a NCO.

AA. "Real property boundary" means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including inter-building real property divisions such as walls and fences.

BB. "Residential area" means those parcels within zoning districts specified as residential (R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, and ES-R) in the "Official Zoning Map" created by Ordinance No 6478-N.S., or as subsequently amended.

CC. "Sound amplifying equipment" means any electronic device for the amplification of the human voice, music, or any other sound, excluding standard automobile radios when used and heard only by the occupants of the vehicle in which the radio is installed, and, as used in this Chapter, warning devices on authorized emergency vehicles or horns or other warning devices on any vehicle used only for traffic safety purposes.

DD. "Sound level" means the level of sound as measured in decibels.

EE. "Sound level meter" means a sound measuring instrument meeting American National Standard Institute's Standard S1.41971 or most recent revision thereof for Type 1 or Type 2 sound level meters or an instrument and the associated recording and analyzing equipment which provide equivalent data. (Ord. 5500-NS § 1 (part), 1982)

Section 3. That Section 13.40.030 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.030 General noise regulations.

A. Notwithstanding any other provisions of this Chapter, and in addition thereto, it shall be unlawful for any person to willfully or negligently make or continue, or cause to be made or continue, any loud, unnecessary, or unusual noise which disturbs the peace and quiet of any neighborhood or which causes any discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area. Non-commercial non-amplified public speaking and public assembly activities conducted on any public space or public right-of-way shall be exempt from the operation of this section.

B. Any violation of this Chapter may be charged as either a misdemeanor or an infraction as set forth in BMC Chapter 1.20. The violation of any of the provisions of this Chapter is declared to be a public nuisance and may also be abated as provided in Sections 11.40.010 through 11.44.030 of the Berkeley Municipal Code.

C. If it is determined by the responding agency that a sound level violates this Chapter, the following procedures shall be followed, except as otherwise provided in Section 13.40.070:

1. A warning shall be issued by a NCO to the person responsible for the violation.
2. If the violation persists following the warning or recurs within an eight-hour period, the person responsible shall be in violation of this Chapter.

D. The factors which will be considered in determining whether a violation of the provisions of this Chapter exists shall include, but not be limited to, the following:

1. The sound level of the alleged objectionable noise.
2. The sound level of the ambient noise.
3. The proximity of the noise to residential sleeping facilities.
4. The nature and zoning of the area within which the noise emanates.
5. The number of persons affected by the noise source.
6. The time of day or night the noise occurs.
7. The duration of the noise and its tonal quality.

E. If a NCO investigates a noise complaint and finds the noise level to have been mitigated to the extent technically and economically feasible, the EHD may deem the noise level to be in compliance with this Chapter. Such determination shall be final. (Ord. 5500-NS § 1 (part), 1982)

Section 4. That Section 13.40.040 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.040 Noise measurement procedure.

Upon receipt of two non-anonymous citizen noise complaints in a Commercial Area or regarding any Event, or upon receipt of one non-anonymous citizen noise complaint in all other areas, a NCO or other authorized agent of the City Manager, equipped with a sound level meter, shall investigate the complaint. Except as otherwise provided in this Chapter, the investigation shall consist of a measurement and the gathering of data to adequately define the noise problem and shall include the following:

- A. Non-acoustic data:
1. Type of noise source.
 2. Location of noise source relative to complainant's property.

3. Time period during which noise source is considered by complainant to be intrusive.
 4. Total duration of noise produced by noise source.
 5. Date and time of noise measurement survey.
- B. Noise measurement procedure. Utilizing the "A" weighting scale of sound level meter and the "slow" meter response, a NCO shall measure the sound level on the receiver's property. (Ord. 5500-NS § 1 (part), 1982)

Section 5. That Section 13.40.050 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.050 Exterior noise standards.

A. Maximum permissible sound levels shall be determined by the zoning district of the property subject to the noise, not the property from which the noise originates.

1. The noise standards for the various categories of land use in Table 13.40-1 or 13.40-2 shall, unless otherwise specifically indicated in other codes, apply to all such property within a designated zone.

2. No person shall operate or cause to be operated, any source of sound at any location within the incorporated City or allow the creation of any noise on property owned, leased, occupied or otherwise controlled by such person, which causes the sound level when measured on any other property to exceed:

- a. The noise standard for that land use as specified in Table 13.40-1 for a cumulative period of more than 30 minutes in any hour; or
- b. The noise standard for that land use as specified in Table 13.40-1 plus 5 dBA for a cumulative period of more than 15 minutes in any hour; or
- c. The noise standard for that land use as specified in Table 13.40-1 plus 10 dBA for a cumulative period of more than 5 minutes in any hour; or
- d. The noise standard for that land use as specified in Table 13.40-1 plus 15 dBA for a cumulative period of more than 1 minute in any hour; or
- e. The noise standard for that land use as specified in Table 13.40-1 plus 20 dBA for any period of time.

Table 13.40-1
EXTERIOR NOISE LIMITS
 (Levels not to be exceeded more than 30 minutes any hour)

Zoning District	Time Period	Noise Level (dBA)
R-1, R-2, R-1A, R-2A, and ESR	7:00 a.m. - 10:00 p.m.	55
	10:00 p.m. - 7:00 a.m.	45
R-3 and above	7:00 a.m. - 10:00 p.m.	60
	10:00 p.m. - 7:00 a.m.	55
Commercial	7:00 a.m. - 10:00 p.m.	65
	10:00 p.m. - 7:00 a.m.	60
Industry	Anytime	70

3. If the measured ambient noise level is greater than the level permissible within any of the noise limit categories above, the sound level when measured on any other property shall not exceed:
 - a. The ambient noise level for a cumulative period of more than 30 minutes in any hour; or
 - b. The ambient noise level plus 5 dBA for a cumulative period of more than 15 minutes in any hour; or
 - c. The ambient noise level plus 10 dBA for a cumulative period of more than 5 minutes in any hour; or
 - d. The ambient noise level plus 15 dBA for a cumulative period of more than 1 minute in any hour; or
 - e. The ambient noise level plus 20 dBA for any period of time.
 4. If the measurement location is on a boundary between two different zones, the sound level limit applicable to the quieter noise zone shall apply.
 5. If possible, the ambient noise level may be measured at the same location along the property line utilized in Section 13.40.050A.2 with the alleged offending noise source inoperative. If the intruding noise source is continuous and cannot reasonably be discontinued or stopped for a time period whereby the ambient noise level can be measured, the ambient noise level may be determined by traveling away from the noise source to a point where a steady state decibel reading is achieved. If this test is not possible, the noise level measured while the source is in operation shall be compared directly to the noise level standards.
- B. The classification of additional areas of the community not listed in Table 13.40-1 in terms of environmental noise zones shall be determined by the EHD. Industrial noise limits are intended primarily for use at the boundary of industrial zones rather than for noise reduction within the zone. (Ord. 5500-NS § 1 (part), 1982)

Section 6. That Section 13.40.060 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.060 Interior noise standards.

- A. Maximum permissible dwelling interior sound levels.
 1. The interior noise standards for multi-family residential dwellings as presented in Table 13.40-2 shall apply, unless otherwise specifically indicated in other codes, within all such dwellings with windows in their normal seasonal configuration.

**Table 13.40-2
INTERIOR NOISE LIMITS**

Zoning District	Time Interval	Allowable Interior Noise Level (dBA)
All	10:00 p.m. - 7:00 a.m.	40
	7:00 a.m. - 10:00 p.m.	45

2. No person shall operate or cause to be operated within a multi-family dwelling unit, any source of sound or allow the creation of any noise which causes the sound level when measured inside a neighboring dwelling unit to exceed:
 - a. The noise standard as specified in Table 13.40-2 for a cumulative period of more than 5 minutes in any hour; or
 - b. The noise standard as specified in Table 13.40-2 plus 5 dBA for a cumulative period of more than 1 minute in any hour; or
 - c. The noise standard as specified in Table 13.40-2 plus 10 dBA for any period of time.
3. If the measured ambient noise level is greater than the level permissible within any of the noise limit categories above, the sound level when measured on the other property shall not exceed:
 - a. The ambient noise level for a cumulative period of more than 5 minutes in any hour; or
 - b. The ambient noise level plus 5 dBA for a cumulative period of more than 1 minute in any hour; or
 - c. The ambient noise level plus 10 dBA for any period of time. (Ord. 5500-NS § 1 (part), 1982)

Section 7. That Section 13.40.070 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.070 Prohibited acts.

Only the warning in Section 13.40.030(C) (the warning procedure) must be given and disobeyed for a violation of subsection A, or subsection B (3) (raucous yelling), (4) (street sales), (5) (animal noise), or (8) (vibration) to arise.

Both the warning procedure and the measurement procedure in Section 13.40.040 (the measurement procedure) must be conducted for a violation of subsection B (1) (sound devices), (2) (amplified sound), (6) (loading/unloading), (7) (construction/demolition), (9) (model vehicles), or (11) (power tools) to arise.

Neither the warning procedure nor the measurement procedure must be conducted for a violation of subsection B (10) (emergency tests), (13) (tampering), or (14) (gas leaf blowers) to arise.

Only the measurement procedure must be conducted for a violation of subsection B (12) (loud clubs without signs) to arise.

A. Noise Disturbances prohibited. No person shall unnecessarily make, continue, or cause to be made or continued, any Noise Disturbance prohibited by Section 13.40.030(A) that is not otherwise specifically listed in subsection B of this Section.

B. Specific prohibitions. The following acts, and the causing or permitting thereof, are declared to be in violation of this Chapter:

1. Radios, television sets, musical instruments and similar devices. Operating, playing or permitting the operation or playing of any radio, television set, phonograph, drum, musical instrument, or similar device which produces or reproduces sound in such a manner as to violate the provisions of Sections 13.40.050 or 13.40.060, except for sound levels for which a variance or permit has been issued by the EHD.

2. Loudspeakers (amplified sound) not associated with an Event. Using or operating for any purpose any loudspeaker, loudspeaker system, or similar device, such

that the sound therefrom violates the provisions of Sections 13.40.050 or 13.40.060, except for sound levels for which a variance or permit has been issued by the EHD.

3. Yelling, shouting. Loud or raucous yelling, shouting, whistling, or singing so as to cause a Noise Disturbance is hereby prohibited.

4. Street sales. The solicitation, sale, or advertising of any product or service by shouting or outcry within any residential or commercial area or noise sensitive zone of the City except by variance issued by the EHD. The provisions of this subdivision shall not be construed to prohibit the selling by outcry of merchandise, food, or beverages at licensed sporting events, parades, fairs, circuses, or other similar licensed public entertainment Events for which a permit has been issued.

5. Animals. Keeping or maintaining, or permitting to be kept or maintained upon any premises owned, occupied, or controlled by any person of any animal or animals, which by any frequent or long continued noise shall cause annoyance or discomfort to two or more reasonable persons of normal sensitiveness who reside in separate residences (including apartments and condominiums). However, a NCO or his or her agent may proceed on the basis of a complaint of only one person, if circumstances are determined to exist whereby a Noise Disturbance caused by an animal affects only one individual. Any noise which is audible continuously for 10 minutes or intermittently for 30 minutes shall be prima facie evidence of such annoyance or discomfort. Factors which can be used to evaluate excessive animal noise include, but are not limited to (a) pitch, (b) pattern, and (c) frequency of occurrence. This subsection may be enforced by an Animal Control Officer.

6. Loading and unloading. Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, or similar objects between the hours of 10:00 p.m. and 7:00 a.m. such that the sound therefrom across a residential real property line violates the provisions of Sections 13.40.050 or 13.40.060.

7. Construction/demolition.

a. Operating or causing the operation of any tools or equipment used in construction, drilling, repair, alteration, or demolition work before 7:00 a.m. on a weekday (or before 9:00 a.m. on a weekend or holiday) or after 7:00 p.m. on a weekday (or after 8:00 p.m. on a weekend or holiday) such that the sound therefrom across a residential or commercial real property line violates Section 13.40.050 or 13.40.060, except for emergency work of public service utilities or by variance issued by the EHD. (This section shall not apply to the use of domestic power tools as specified in Section 13.40.070, subsection B.11.)

b. Noise restrictions at affected properties. Where technically and economically feasible, construction activities shall be conducted in such a manner that the maximum sound levels at affected properties will not exceed those listed in the following schedule:

AT RESIDENTIAL PROPERTIES: Mobile Equipment. Maximum sound levels for nonscheduled, intermittent, short-term operation (less than 10 days) of mobile equipment:

Table 13.40-3

	R-1, R-2 Residential	R-3 and above Multi-Family Residential	Commercial/Industrial
Weekdays 7:00 a.m. to 7:00 p.m.	75 dBA	80 dBA	85 dBA
Weekends 9:00 a.m. to 8:00 p.m. and legal holidays	60	65	70

Stationary Equipment. Maximum sound levels for repetitively scheduled and relatively long term operation (period of 10 days or more) of stationary equipment:

Table 13.40-4

	R-1, R-2 Residential	R-3 and above Multi-Family Residential	Commercial/Industrial
Weekdays 7:00 a.m. to 7:00 p.m.	60 dBA	65 dBA	70 dBA
Weekends 9:00 a.m. to 8:00 p.m. and legal holidays	50	55	60

8. Vibration. Operating or permitting the operation of any device that creates a vibration, which annoys or disturbs at least two or more reasonable persons of normal sensitiveness who reside in separate residences (including apartments and condominiums) at or beyond the property boundary of the source, if on private property, or at least 150 feet (46 meters) from the source, if on a public space or public right-of-way.

9. Powered model vehicles. Operating or permitting the operation of powered model vehicles such that the sound therefrom across a residential or commercial real property line violates the provisions of Sections 13.40.050 or 13.40.060.

10. Emergency signaling devices.

a. The intentional sounding or permitting the sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle, or similar stationary emergency signaling device, except for emergency purposes or for testing, as provided in subparagraph b. below.

b. (i) Testing of a stationary emergency signaling device shall not occur before 7:00 a.m. or after 7:00 p.m. Any such testing shall use only the minimum cycle test time. In no case shall such test time exceed 60 seconds.

(ii) Testing of the complete emergency signaling system, including the functioning of the signaling device, and the personnel response to the signaling device, shall not occur more than once in each calendar month. Such testing shall not occur before 7:00 a.m. or after 10:00 p.m. The time limit specified in subparagraph b(i) shall not apply to such complete system testing.

c. Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm, unless such alarm is terminated within 15 minutes of any single security violation or false alarm.

11. Domestic power tools, machinery.

a. Operating or permitting the operation of any mechanically powered saw, sander, drill, grinder, lawn or garden tool, or similar tool before 7:00 a.m. on a weekday (or before 9:00 a.m. on a weekend or holiday) or after 7:00 p.m. on a weekday (or after 8:00 p.m. on a weekend or holiday) such that the sound therefrom across a residential or commercial real property line violates Sections 13.40.050 or 13.40.060.

b. Any motor, machinery, pump, such as swimming pool equipment, etc., shall be sufficiently enclosed or muffled and maintained so as not to create a Noise Disturbance in accordance with Sections 13.40.050 or 13.40.060.

12. Places of public entertainment. Operating or permitting the operation or playing of any loudspeaker, musical instrument, motorized racing vehicle, or other source of sound in any place of public entertainment that exceeds 95 dBA as read on the scale of a sound level meter at any point normally occupied by a customer, without a conspicuous and legible sign stating: "WARNING! SOUND LEVELS WITHIN MAY CAUSE HEARING IMPAIRMENT."

13. Tampering. The removal or rendering inoperative, other than for purposes of maintenance, repair, or replacement, of any noise control device or element thereof, of any product required to meet specified noise emission limits under federal, state, or local law, and the use of said product after its noise control device has been removed or rendered inoperative, other than for purposes of maintenance, repair, or replacement.

14. Notwithstanding subsection B.11 of this section, it shall be unlawful for any person, including any City employee, to operate any portable machine powered with a gasoline engine used to blow leaves, dirt, and other debris off sidewalks, driveways, lawns, or other surfaces within the City limits.

a. Notice of this prohibition shall be posted in all stores selling such gasoline powered machines within the City limits. (Ord. 6026-NS § 1, 1990; Ord. 5500-NS § 1 (part), 1982)

Section 8. That Section 13.40.080 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.080 Special provisions--Exemptions.

The following are exempt from the provisions of this Chapter:

A. Emergency exemption. The provisions of this Chapter shall not apply to: (a) the emission of sound for the purpose of alerting persons to the existence of an emergency, or (b) the emission of sound in the performance of emergency work.

B. Warning devices. Warning devices necessary for the protection of public safety, as for example, police, fire and ambulance sirens, and train horns, shall be exempted from the provisions of this Chapter.

C. If a permit for an Event allows sound levels that are louder than the limits specified in Section 13.40.050 or 13.40.060, or time periods for sound levels that are longer than the limits specified in this Chapter, then the sound levels and time periods in the permit shall apply.

D. There may be instances, especially in existing older buildings, where compliance with the noise standards set forth in this Chapter may not be economically or technically feasible, and therefore, the EHD may grant administrative exceptions to those standards on a case-by-case basis. (Ord. 5500-NS § 1 (part), 1982)

Section 9. That Section 13.40.090 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.090 Issuance of variances by the NCO.

The creation of any noise which exceeds the standards specified in this Chapter that is not otherwise exempt requires the issuance of a variance. The EHD shall evaluate all applications for variances from the requirements of this Chapter and may grant said variances with respect to time for compliance, subject to such terms, conditions, and requirements as it may deem reasonable to achieving compliance with the provisions of this Chapter. Each such variance shall set forth in detail the approved method of achieving compliance and a time schedule for its accomplishment. If in the judgment of the EHD the time for compliance cannot be reasonably determined, a variance to cause the noise may be issued for a period not to exceed three years. In determining the reasonableness of the terms of any proposed variance, the EHD shall consider the magnitude of nuisance caused by the offensive noise, the uses of property within the area of impingement by the noise, operations carried on under existing nonconforming rights or conditional use permits or zoning variances, the time factors related to study, design, financing and construction of remedial work, the economic factors related to age and useful life of the equipment and the general public interest and welfare.

A. Any person seeking a variance pursuant to this section shall file an application with the EHD. The application shall contain information which demonstrates that bringing the source of sound or activity for which the variance is sought into compliance with this Chapter would constitute an unreasonable hardship on the applicant, or the community, or on other persons.

A separate application shall be filed for each noise source; provided, however, that several mobile sources are under common ownership, or several fixed sources on a single property may be combined into one application. Notice of an application for variance shall be posted for 12 working days in the area of the proposed variance, which notice shall state the last the day to file an objection to the variance. If an individual who claims to be adversely affected by allowance of the variance files a written objection by the deadline provided in the notice with the EHD objecting to the proposed variance, the EHD will facilitate discussion with the applicant to mitigate that individual's concerns. Any late written objections shall be taken into consideration for future events.

B. In determining whether to grant or deny the application, the EHD shall balance the hardship on the applicant, the community, and other persons of not granting variance against the adverse impact on the health, safety, and welfare of persons affected, and any other adverse impacts of granting the variance. Applicants for variances and persons contesting variances may be required to submit such information as the EHD may reasonably require. In granting or denying an application, the EHD shall keep on public file a copy of the decision and the reasons for denying or granting the variance.

C. Variances shall be granted by notice to the applicant containing all necessary conditions, including a time limit on the permitted activity. The variance shall not become effective until all conditions are agreed to by the applicant. Non-compliance with any condition of the variance shall terminate the variance and subject the person holding it to those provisions of this Chapter. (Ord. 5500-NS § 1 (part), 1982)

Section 10. That Section 13.40.100 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.100 Permits--Outdoor amplified sound.

A. Applications. Any person(s) or organization(s) wishing to use amplified sound outdoors for an Event must obtain a permit for the amplified sound from the EHD. In evaluating the application, the EHD shall consider the following factors in addition to additional criteria the EHD may adopt:

Factors:

1. Time and duration (if any) of Event.
2. Location or route of Event.
3. Anticipated number of people in attendance.
4. Number of people to be affected by the Event.
5. Magnitude of noise.
6. Provisions of the organization to deal with complaints received.
7. Provisions of the organization for admitting people to the event.
8. Provisions of the organization for crowd control, disabled access, pedestrian access, and vehicle access.
9. Past compliance and non-compliance with the provisions of this Chapter and previous permits granted to the organization.
10. That on private property there have been no more than seven permits for outdoor or indoor amplified sound granted for the location applied for within that calendar year or any such permit granted for an event taking place at the location within 30 days of the requested date.
11. That on public property no more than one permit be issued for the Location in any one day.

This application will be due to the EHD no less than 30 days before the intended date of the Event, unless the proposed Event is in response to an occurrence whose timing did not reasonably allow the applicant to file a timely application and the imposition of this time limitation would place an unreasonable restriction on free speech. An application must be on a form provided by the City and shall include the names, addresses, phone numbers, and photo identification of all persons who are or will be responsible for the conduct of the Event. The application will be denied if the information contained in the application, including supplemental information, if any, is found to be false in any material respect, the applicant fails to meet the City requirements for a permit, or Factors 10 or 11 above apply.

B. Contents of Permits and Conditions.

An amplified sound permit may impose reasonable time, place, and manner conditions such that the proposed sound will not pose a traffic or safety hazard, interfere with fire or police protection services, or unreasonably interfere with pedestrian or

vehicular use of the Public right-of-way. All amplified sound permits shall be subject to the following conditions:

1. The only amplified sounds permitted shall be either music or human speech, or both;
 2. Sound amplification equipment on private property shall not be utilized in any location for a period in excess of 4 hours in any 24-hour period;
 3. Sound amplifying equipment when associated with an approved Event permit shall be used upon public property for the duration of the Event and only between the hours of 10:00 a.m. and 8:00 p.m., except as may be permitted pursuant to other provisions of this Code, such as Section 13.40.080, and upon private property only between the hours of 10:00 a.m. and 10:00 p.m.;
 4. Speakers for outdoor sound amplification equipment shall be directed, to the extent feasible toward open or unoccupied space and away from residentially occupied property;
 - 5a. The sound emanating from sound amplifying equipment on private property shall not exceed 15 dBA above the ambient noise level measured at the exterior of any dwelling unit located on any residential property; and in no case to exceed 65 dBA at the exterior of any such building;
 - 5b. On public property such sound may not exceed 15 dBA above the ambient noise level measured at any point 50 feet from the sound amplifying equipment. The EHD may allow higher limits upon a showing that an expected audience cannot be effectively communicated to within the above limits;
 6. In any event, the volume of sound shall be so controlled that it will not be unreasonably loud, raucous, jarring, disturbing or a nuisance to reasonable persons of normal sensitiveness within the area of audibility; Such other terms as may be necessary to insure compliance with the provisions of this Chapter; The organization must provide the EHD with the names of two people who will be in attendance at all times and have the authority to deal with a NCO or the police in response to complaints and/or violations; The permittee shall carry the permit during the proposed Event and show it, upon demand, to any City employee authorized to enforce this Chapter; All sound equipment must be kept in locations that comply with the location and size requirements of Section 14.48.170. The EHD may require the applicant to distribute flyers throughout the surrounding area in advance of the proposed Event, notifying the affected residents and business people of the proposed Event.
 - D. A NCO may summarily terminate the permit after a warning, if the activity for which the permit is issued results in violations of any applicable laws or regulations.
 - E. A violation of any permit conditions is a violation of this Chapter.
 - F. The EHD may issue additional regulations to further the purposes of this Section.
- (Ord. 5500-NS § 1 (part), 1982)

Section 11. That Section 13.40.110 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.110 Permits--Indoor amplified sound.

For indoor amplified sound, a person or organization may apply for a permit from the EHD pursuant to Section 13.40.100 of this Chapter, if sound levels will violate the standards set forth in Sections 13.40.030, 13.40.050 or 13.40.060; provided, however,

that such a permit will be subject to all of the applicable conditions listed in Section 13.40.100.

All indoor amplified sound will otherwise be subject to the sound levels stated in Sections 13.40.030, 13.40.050 and 13.40.060.

If there is reason to believe that any indoor amplified sound may be of a prolonged or disturbing nature, the person(s) or organization(s) responsible shall notify all residents within a 50-foot area at least 5 days prior to the incident of the time and date of the activity and whom to contact in case of a complaint. (Ord. 5500-NS § 1 (part), 1982)

Section 12. That Section 13.40.115 is added to the Berkeley Municipal Code to read as follows:

Section 13.40.115 Permissible levels for entertainment establishments.

An entertainment establishment may exceed the sound level limits in this Chapter by no more than five decibels higher than either the applicable standard or the ambient noise level, whichever is higher, and may deviate from the time restrictions set forth in this Chapter, if the applicable Use Permit so provides.

Section 13. That Section 13.40.120 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.120 Appeals.

Any person directly affected by the noise and/or the applicant who is aggrieved by approval or disapproval of a variance or permit by the EHD may appeal in writing to the City Manager no less than 72 hours prior to the anticipated exercise of the variance or permit. The City Manager shall consider the appeal as soon as possible. The City Manager shall provide written notice of his or her decision to the appellant. The City Manager's decision shall be final. (Ord. 5500-NS § 1 (part), 1982)

Section 14. That Section 13.40.130 is added to the Berkeley Municipal Code to read as follows:

Section 13.40.130 Fees.

A. The City Council may establish by resolution the fees that shall be charged for permits issued under this Chapter.

B. Any indigent person who cannot afford to pay the permit fees may apply for a fee waiver accompanied by such relevant information and documentation as is reasonably necessary to verify indigence. For purposes of this Section, an indigent person is one who is eligible for County relief pursuant to Sections 17000 *et seq.* of the Welfare and Institutions Code.

C. This section shall not limit the EHD from recovering all costs associated with sound surveys and complaint investigations pursuant to the fee resolution.

Section 15. Copies of this Ordinance shall be posted for two (2) days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen (15) days of adoption, copies of this Ordinance shall be

filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.