


Office of the City Manager

June 28, 2012

To: Honorable Mayor and City Councilmembers

From: Christine Daniel, City Manager 

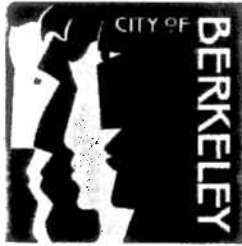
Subject: California Nurses Association activity at Alta Bates Summit
Ashby Campus

In response to inquiries some of you have received regarding the use of amplified sound by the California Nurses Association (CNA) during their recent rally at the Alta Bates Summit Ashby campus, here is some information regarding the discussions staff have had with CNA. The attached letter dated June 12, 2012 and permit #012-130 issued to the CNA explains the reasons for the sound permit conditions. Please contact me if you need further information.

Thank you.

Attachments

cc: William Rogers, Deputy City Manager
Mark Numainville, Acting City Clerk
Ann-Marie Hogan, City Auditor
Jane Micallef, Interim Director of Health, Housing & Community Services
Mary Kay Clunies-Ross, Public Information Officer



Office of the City Manager

June 12, 2012

Ms. Brenna Young
California Nurses Association
2000 Franklin Street
Oakland California, Ca 94612

Re: Amplified Sound Permit Application Appeal Denial
California Nurses Association Rally June 13, 2012
2450 Ashby Avenue, Berkeley Ca

On June 11, 2012, staff met with Ms. Pamela Allen to review amplified sound applications for California Nurses Association (CNA) rallies planned for June 13, 2012 at Alta Bates Summit Ashby campus and Herrick Campus. We are issuing the Herrick Campus amplified sound permit for June 13th as requested but will impose time, place, and manner restrictions on the sound permit for the Ashby Campus location.

These restrictions attempt to balance the First Amendment interests of the applicants (CNA) and the in-hospital patient community. In offering the immediately adjacent sidewalk space (just west of the Colby entrance and on both the City Right-Of-Way and Alta Bates Hospital property) to CNA for a sound stage (with "quiet zone" picket also permitted directly in front of the hospital building) for 4 hours (versus the 3 hours authorized on May 1st), we believe we have struck a reasonable balance of community interests that both enables robust expression by, and public visibility of, CNA and their viewpoint while mitigating and reducing the deleterious effect of spiking sound levels (as measured by the Environmental Health Department on May 1st and May 2nd), particularly within the Neonatal Intensive Care Unit of the Hospital.

City staff have also offered the applicant additional venues for expression of their viewpoint, including the N/E corner (sidewalk) of Telegraph at Ashby and Civic Center Park (for a larger CNA Rally), as available.

Staff has already provided you information regarding noncompliance with previous amplified sound permit requirements for a CNA rally held on May 1, 2012, at the Ashby

campus. Specifically, amplified sound was observed before and after the permitted 10:00 a.m. - 2:00 p.m. timeframe. In addition, individuals identified as event attendants on the amplified sound application were not available at the time of the event. Finally, sound levels associated with the amplified sound equipment used at the rally were measured in the neonatal intensive care unit directly above the rally location. The sounds were not only audible but were above ambient levels which means that the amplified sounds were intruding into the building. Medical staff reported that the amplified sound was disturbing fragile infants in the neonatal ICU and interfering with doctor/patient communication.

For the reasons stated above, staff imposed time, place, and manner restrictions on the amplified sound permit application for the June 13, 2012, rally at the Ashby campus, in accordance with Section 13.40.100.B. In order to mitigate the impacts of amplified sound on hospital patients, the permit restricted amplified sound equipment to Ashby Avenue on the area west of Colby, but not east of Colby.

Today we received an application for an amplified sound permit for the Ashby campus rally east of Colby ignoring the time, place and manner restrictions in the original permit. Despite a requirement to file an appeal no less than 72 hours prior to the event under Section 13.40.120, we are treating this submittal as an appeal to the time, place, and manner restrictions imposed at the Ashby campus location.

Based on my review of the permit application and staff recommendations, I am denying the request for an appeal for the reasons summarized above, and I have instructed staff to issue an amplified sound permit with time place and manner restrictions for amplified sound for the Ashby Campus location west of Colby for June 13, 2012, between 10:00 a.m. – 2:00 p.m.

Sincerely,



William Rogers
Deputy City Manager



Department of Health Services
 Environmental Health Division
 1947 Center Street, 3rd Floor, Berkeley, CA 94704
 (510) 981-5310 Fax: (510) 981-5305
 Email: envhealth@cityofberkeley.info

Permit Fee: \$40.00
 Variance Fee: \$164.00
 Waived: Yes ___ No
 Resolution #: _____
 *Fees Change on July 1st Each Year
 Permit Number: 012-130
 ****No Refund****

APPLICATION FOR AN AMPLIFIED SOUND PERMIT or VARIANCE ONLY
NOTE: THIS PERMIT DOES NOT AUTHORIZE A SPECIAL EVENT
(NOT VALID ON U.C. PROPERTY)

Approved Permits must be available at the Event site

A permit is hereby issued to applicant (over 18 years) Name: Brenna Young Tel. Phone: (510) 273-2200
 Address: 2000 Franklin St., Oakland 94612 and Name of Organization: California Nurses Assn.
 to operate a sound amplifier in the City of Berkeley at the following Location: Alta Bates campus -
2450 Ashby Ave. on 06/13/12 between the hours of 10:00 a.m. and 2:00 p.m.

EFFECTIVE JANUARY 22, 2010, THIS PERMIT WILL BE AUTOMATICALLY DENIED IF:

- Application is filed without applicable Fees or Fee Resolution
- Application for Permit is filed less than 30 days prior to an Event (except for an occurrence that does not allow timely filing)
- Application is filed less than 30 days for Noise Variance (no exceptions)
- Time for permit on private property exceeds four (4) hours in any 24 hours
- Time period for permit is later than 8:00 p.m. on Public and/or Private property
- Application is incomplete, has missing information and/or is filed without Supplemental information
- Application does not comply with provisions of the Noise Ordinance
- Application does not comply with other City Ordinances

Event Information:

NAME OF EVENT: First Amendment Strike, picket, rally FIRST TIME EVENT: Yes No REPEAT EVENT: Yes No
 PURPOSE: free speech about labor dispute ANTICIPATED NUMBER OF PEOPLE ATTENDING: 100
 LOCATION OF EVENT: City Park Public Sidewalk Public Street Private Property
 TYPE OF EVENT: Temporary Event Entertainment Event Other _____
 VARIANCE REQUESTED: Yes No SPECIAL EVENT PERMIT REQUESTED: Yes No

Is this event to be held at a City park? Yes No If Yes, contact Parks Recreation and Waterfront Dept. at (510) 981-5150
 Is this event open to the public? Yes No If Yes, contact Parks Recreation and Waterfront Dept. at (510) 981-5150
 Will food be sold or given at this event? Yes No If Yes, apply for Temp food Permit at Env. Health at (510) 981-5310
 Will there be alcoholic beverages sold/given at this event? Yes No If YES, contact Police Dept. at (510) 981-5805

Equipment Information:

> Type of Amplifier: Fixed PA System Mobile: Type of Vehicle: _____ License Plate # _____
 Other (Explain) bullhorn - to be used while walking picket line
 > Number of Amplifiers: 2 Number of Speakers: up to 6 Number of Performers: 0
 > Type of Outlet: Electrical Outlet Portable Generator(s): How Many: _____ Other: _____

* A rally will be held from approximately 11:00 a.m. to approximately 11:45 a.m. www.cityofberkeley.info
 * bullhorn use will be on-and-off while picketing, but not after 9:00 a.m. Noise Permit CNO 13.40.100 Effective 1/22/2010

Operator Information (REQUIRED):

Name of two (2) event attendants who will monitor the sound level and respond to complaints and violations:

Name: Sue Fendley Address: 2000 Franklin St., Oakland Phone: (510) 316-1301
 Name: Ann Stewart Address: 2000 Franklin St., Oakland Phone: (510) 332-2366
 Amplifier Operator: Greg Culler Address: 1800 Diesel Dr. #20, Sacramento Phone: (916) 225-4029
 Photo ID of Applicant: attached Driver's License # D2991768 Exp Date: 01/07/2017

Supplemental Information REQUIRED on a separate sheet. Please note that an application will not be accepted without the following information:

1. Submit to scale a site map with equipment dimensions. This applies to all events on the sidewalk, Public Street or City Park
2. Provide space layout for equipment with side walk clearances
3. Show location and placement of each speaker
4. List number (how many) and type of instruments, equipment and speakers including bullhorns required for this event.
5. Submit street and route map showing all points and street intersections where performers will be performing and stopping. Each stopping point requires a separate permit. (This information is REQUIRED for Mobile Vehicles or a Street Parade).

Note: Input from other city departments is required before processing this application.

Briefly Explain the Following:

1. Provisions to deal with incoming complaints: We will comply with requests to lower volume
2. Provisions to admit people to the event: All people welcome if peaceful and in compliance w/ City Ordinance
3. Provisions for crowd control: We will have on-site security to enforce crowd size restrictions
4. Provisions to monitor noise levels during the performance: Volume controls
5. Provision to distribute event flyers in the surrounding areas in advance: Materials posted and given to nurses in adv
6. Have you been cited, warned verbally or in writing to leave or comply with the noise ordinance? No
 No Yes If yes, date(s) _____ (Inaccurate information will be a cause for denial of this permit)

"I have received and reviewed those sections of Berkeley Municipal Code (BMC) Chapter 13.40, the Community Noise Ordinance, that are relevant to use of outdoor amplified sound. I am familiar with the contents of the Ordinance and I agree that the sound amplifying equipment, which is the subject of this permit, will be used only during the hours and on the date specified in this permit. I understand that a violation of any provision of the Ordinance may result in the issuance of a citation, may require my appearance in court, and may result in a fine of up to \$500.00. I acknowledge that the amplified sound will be controlled so as not to be 'unreasonably loud, raucous, jarring, disturbing or a nuisance to reasonable persons of normal sensitiveness within area of audibility.' (BMC Section 13.40.100.C.7) 'Approval of the permit may be conditioned upon such other terms as necessary to insure compliance' (BMC Section 13.40.100). By accepting this permit I agree to take all steps necessary to resolve complaints about my use of amplified sound and to ensure compliance with the provisions of the Ordinance."

NOTE: This approval is for AMPLIFIED SOUND ONLY. For all other issues, including park access and rules, public right-of-way permits, and special event permits, please contact the appropriate government agency.

Original Signature of Applicant or Responsible Party: [Signature] Date 6/11/12

***Please Note that Faxed Copies Will Not Be Accepted.

For Noise Control Officer Only

Comments: Mainly sound levels, time volume control and comply with City Ordinance.
SEE ATTACHED PERMIT CONDITIONS

Permit DENIED: _____ Permit APPROVED: X
 Noise Control Officer: [Signature] Date: 6/12/12

For Internal Office Use Only:

Anticipated noise level in decibels:
 (check one)
 55 dBA - R1, R2, ESR
 60 dBA - R3, MUR
 65 dBA - Commercial
 above 65 dBA - Variance Required
 | 70 dBA - M, MM, MULJ
 noise level not to exceed _____ dBA

Amplified Sound Permit Conditions

Applicant: Brenna Young c/o California Nurses Association
Location: Sidewalk along Ashby Avenue west of Colby near 2450 Ashby Avenue
Date of Event: June 13, 2012
Permit Number: #012-130

1. Amplified sound is permitted west of Colby Street on the sidewalk along Ashby Avenue between 10:00 a.m. and 2:00 p.m. with sound levels not to exceed 75 dBA (decibels).
2. All sound (P.A bull-horns to be directed to the north and west away from the hospital building.
3. A "pedestrian corridor" shall be maintained at all times to permitted sidewalk area to allow patients and other pedestrians, including those who are mobility impaired to travel freely.
4. On-site event monitors shall be available for the entirety of the event and available to Public Safety personnel via the identified phone numbers on the permit application.