

CHAPTER 9.32

NOISE ABATEMENT AND CONTROL

9.32.401 Purpose and Intent. The City Council finds and declares that: (Ord. 90-22)

A. Inadequately controlled noise presents a growing danger to the health and welfare of the residents of the City;

B. The making and creating of disturbing, excessive, offensive or unusually loud noises within the jurisdictional limits of the City is a condition which has persisted and the level and frequency of occurrence of such noises continue to increase;

C. The making, creation or continuance of such excessive noises which are prolonged or unusual in their time, place and use effect and are a detriment to the public health, comfort, convenience, safety, welfare, and prosperity of the residents of the City of Encinitas;

D. Every person is entitled to an environment in which the noise is not detrimental to his or her life, health and enjoyment of property; and

E. The necessity in the public interest for the provisions and prohibitions hereinafter contained and enacted is declared to be a matter of legislative determination and public policy and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in the pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare, prosperity, peace and quiet of the City and its inhabitants.

F. To administer the provisions of this Chapter, the City Manager is authorized to appoint one or more Noise Control Officers.

9.32.402 Definitions. Whenever the following words and phrases are used in this Chapter, unless otherwise defined herein, they shall have the meaning ascribed to them in this section:

A. "Aircraft" shall mean any powered vehicle which at any time of its operation is airborne, and is used to transport people or materials for whatever purpose.

B. "Ambient sound level" shall mean the composite noise from all sources near and far. In this context, the ambient noise level constitutes a normal or existing level of environmental noise at a given location and time.

C. "Average sound level" shall mean a sound level typical of the sound levels at a certain place during a given period of time, averaged by the general rule of combination for sound levels, said general rule being set forth in American National Standard Specifications for Sound Level Meters S1. 4-1971. Average sound level is also called equivalent continuous sound level (Leq).

D. "Commercial purpose, loud speaking amplifiers for advertising" shall mean and include the use, operation or maintenance of any sound amplifying equipment for the purpose of advertising any business, or any goods, or any services, or for the purpose of attracting the attention of the public to, or advertising for, or soliciting patronage or customers to or for any performance, show, entertainment, exhibition, or event, or for the purpose of demonstrating such sound equipment.

E. "Construction equipment" shall mean any tools, machinery or equipment used in connection with construction operations including all types of "special construction" equipment as defined in the pertinent sections of the California Vehicle Code when used in the construction process on any construction site, regardless of whether such construction site be located on-highway or off-highway.

F. "Container" shall mean any receptacle, regardless of contents, manufactured from wood, metal, plastic, paper, or any other material including but not limited to any barrel, basket, box, crate, tub, bottle, can or refuse container.

G. "Decibel" shall mean a unit for measuring the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals.

H. "Emergency work" shall mean work made necessary to restore property to a safe condition following 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 when restoring utility service.

I. "Motor vehicles" shall mean any and all self-propelled vehicles as defined in the California Vehicle Code and shall specifically include, but not be limited to, "mini-bikes" and "go-carts".

J. "Noise control officer" shall mean a person or organization appointed by the City Manager.

K. "Noise level" shall mean "sound level" and the terms may be used interchangeably herein.

L. "Noncommercial purpose, loud speaking amplifiers for advertising" shall mean the use, operation, or maintenance of any sound equipment for other than a "commercial purpose." Noncommercial purpose shall mean and include, but shall not be limited to, philanthropic, political, patriotic and charitable purposes.

M. "Person" shall mean a person, firm, association, co-partnership, joint venture, corporation, or any entity, public or private.

N. "Powered model vehicles" shall mean, but shall not be limited to airborne, waterborne, or landborne vehicles such as model airplanes, model boats and model vehicles of any type or size which are not designed for carrying persons or property and which can be propelled in any form other than manpower or windpower.

O. "Sound amplifying equipment" shall mean any machine or device, mobile or stationary used to amplify music, the human voice, or any sound.

P. "Sound level" (noise level) shall mean the weighted sound pressure level obtained by the use of a sound level meter and frequency weighing network as specified in American National Standards Institute specifications for sound level meters (ANSI S1.4-1971, or the latest revision thereof). If the frequency weighing employed is not indicated, the A-weighing is implied.

Q. "Sound level meter" shall mean an instrument, including a microphone, an amplifier, readout and frequency weighing networks for the measurement of sound levels, which meets or exceeds the requirements pertinent for type S2A meters in the American National Standards Institute Specifications for Sound Level Meters, S1.4-1971 or the latest revision thereof.

R. "Sound truck" shall mean any motor vehicle or other vehicle regardless of motive power whether in motion or stationary having mounted thereon, built-in, or attached thereto any sound amplifying equipment other than a car radio or television.

S. "Disturbing, excessive or offensive noise" shall mean:

1. Any sound or noise which constitutes a nuisance involving discomfort or annoyance to persons of normal sensitivity residing in the area.

2. Any sound or noise exceeding criteria standards, or levels as set forth in this Chapter.

T. "Water craft" shall mean any boat, ship, barge, craft or floating thing designed for navigation in the water which is propelled by machinery, whether or not such machinery is the principal source of propulsion, but shall not include a vessel possessing a valid marine document issued by the United States Bureau of Customs or any federal agency successor thereto.

U. Supplementary definitions of technical terms. Definitions of technical terms not defined herein shall be obtained from the American National Standard, "Acoustical Terminology" S1. 1-1961 (R-1971) or the latest revision thereof.

9.32.403 Sound Level Measurement

A. Any sound or noise level measurement made pursuant to the provisions of this Chapter shall be measured with a sound level meter using the A-weighting and "slow" response pursuant to applicable manufacturer's instructions.

B. The sound level meter shall be appropriately calibrated and adjusted as necessary by means of an acoustical calibrator of the coupler-type to assure meter accuracy within the tolerances set forth in American National Standards ANSI-S1. 4-1971.

C. For outside measurements, the microphone shall be not less than four (4) feet above the ground, at least four (4) feet distant from walls or other large reflecting surfaces and shall be protected from the effects of wind noises by the use of appropriate wind screens and the location selected shall be at any point on the affected property. In cases when the microphone must be located within ten (10) feet of walls or similar large reflecting surfaces, the actual measured distances and orientation of sources, microphone and reflecting surfaces shall be noted and recorded. In no case shall a noise measurement be taken within five (5) feet of the noise source.

D. For inside measurements, the microphone shall be at least three (3) feet distant from any wall, ceiling or partition, and the average measurement of at least three (3) microphone positions throughout the room shall be determined.

9.32.404 Sound Level Limits. See Section 30.40.010 of the Municipal Code for level limits.

9.32.405 Motor Vehicles

A. Repairs of Motor Vehicles. It shall be unlawful for any person within the City to repair, rebuild, or test any motor vehicle in such a manner as to cause disturbing, excessive or offensive noise.

B. On-Highway. Violations for exceeding applicable noise level limits as to persons operating motor vehicles on a public street or highway in the City shall be prosecuted under applicable California Vehicle Code provisions and under Federal Regulation adopted pursuant to 42 U.S.C. § 4905(a)(1) (A), (B) and (C)(ii), (iii) for which enforcement responsibility is delegated to local governmental agencies.

C. Off-Highway. Except as otherwise provided for in this ordinance, it shall be unlawful to operate any motor vehicle of any type on any site other than on a public street or highway as defined in the California Vehicle Code in a manner so as to cause noise in excess of those noise levels permitted for On-Highway motor vehicles as specified in the table "35 miles per hour or less speed limits" contained in Section 23130 of the California Vehicle Code.

D. Emergency Vehicles. Nothing in this Section shall apply to authorized emergency vehicles when being used in emergency situations.

E. Urban Transit Buses. Buses as defined in the California Vehicle Code shall at all times comply with the requirements of this Section.

9.32.406 Powered Model Vehicles. It shall be unlawful for any person to operate any powered model vehicle except between the hours of 7 a.m. and 9 p.m. and then only in such a manner so as not to emit noise in excess of those levels set forth in Section 9.32.404; however, if powered model vehicles are operated in public parks at a point more than 100 feet from the property line, the noise level shall be determined at a distance of 100 feet from the noise source instead of at the property line, and noises from powered model vehicles measured at that distance in excess of the noise limits specified in Section 9.32.404 are prohibited.

9.32.407 Solid Waste Management Vehicles & Parking Lot Cleaning Devices.

A. Solid Waste Management Vehicles. No person shall operate, or permit to be operated, a refuse compacting, processing, or collection vehicle between the hours of 10 p.m. to 6 a.m. in or adjacent to any residential zone unless a variance has been applied for and granted pursuant to this Chapter.

B. Parking Lot and Sidewalk Cleaning Devices.

1. No person shall operate, or permit to be operated, an engine-powered parking lot or sidewalk sweeper or blower or high pressure cleaning devices between the hours of 8 p.m. to 7 a.m. in or adjacent to any residential zone unless a variance has been applied for and granted pursuant to this Chapter; and

2. No person shall operate, or permit to be operated, an engine-powered parking lot and sidewalk sweeper or blower or high pressure cleaning devices on a Sunday or on a Federal holiday in or adjacent to any residential zone unless a variance has been applied for and granted pursuant to this Chapter.

9.32.408 Watercraft. Violations for excessive noise of watercraft operating in waters under the jurisdiction of the City shall be prosecuted under applicable provisions of the California Harbors and Navigation Code.

9.32.409 Airports. All noise emanating from airport activities other than that produced by aircraft shall be subject to all of the regulations contained in this Chapter.

9.32.410 Construction Equipment. Except for emergency work, it shall be unlawful for any person, including the City, to operate construction equipment at any construction site, except as outlined in subsections A and B below:

A. It shall be unlawful for any person, including the City, to operate construction equipment at any construction site on Sundays, and days appointed by the President, Governor or the City Council for a public fast, thanksgiving or holiday. Notwithstanding the above, a person may operate construction equipment on the above-specified days between the hours of 10 a.m. and 5 p.m. in compliance with the requirements of subsection B of

this Section at his residence or for the purpose of constructing a residence for himself, provided such operation of construction equipment is not carried on for profit or livelihood. In addition, it shall be unlawful for any person to operate construction equipment at any construction site on Mondays through Saturdays except between the hours of 7 a.m. and 7 p.m.

B. No such equipment, or combination of equipment regardless of age or date of acquisition, shall be operated so as to cause noise at a level in excess of seventy-five (75) decibels for more than 8 hours during any twenty-four (24) hour period when measured at or within the property lines of any property which is developed and used either in part or in whole for residential purposes.

In the event that lower noise limit standards are established for construction equipment pursuant to State or Federal law, said lower limits shall be used as a basis for revising and amending the noise level limits specified in this subsection.

9.32.411 Containers and Construction Material. It shall be unlawful for any person to handle or transport or cause to be handled or transported in any public place, any container or any construction material in such a way as to create a disturbing, excessive, or offensive noise.

9.32.412 Signal Device for Food Trucks. No person shall operate or cause to have operated or used any sound signal device other than sound-amplification equipment attached to a motor vehicle wagon or manually propelled cart from which food or any other items are sold which emits a sound signal more frequently than once every ten minutes in any one street block and with a duration of more than ten seconds for any single emission. The sound level of this sound signal shall not exceed ninety (90) decibels at fifty (50) feet.

9.32.413 Multiple Family Dwelling Units. See Section 30.40.010A for allowable interior noise levels for multiple family dwelling units.

9.32.414 General Noise Regulations

A. General Prohibitions. In the absence of objective measurement by use of a sound level meter, additionally it shall be unlawful for any person to make, continue, or cause to be made or continued, within the limits of the City, any disturbing, excessive or offensive noise which causes discomfort or annoyance to reasonable persons of normal sensitivity residing in the area.

The characteristics and conditions which should be considered in determining whether a violation of the provisions of this section exists, include, but are not limited to, the following:

1. The level of noise;
2. Whether the nature of the noise is usual or unusual;
3. Whether the origin of the noise is natural or unnatural;
4. The level of the background noise;
5. The proximity of the noise to sleeping facilities;
6. The nature and zoning of the area within which the noise emanates;
7. The density of the inhabitation of the area within which the noise emanates;
8. The time of the day or night the noise occurs;
9. The duration of the noise;
10. Whether the noise is recurrent, intermittent or constant; and
11. Whether the noise is produced by a commercial or noncommercial activity.

B. Disturbing, Excessive or Offensive Noises. The following acts, among others, are declared to be disturbing, excessive and offensive noises in violation of this Chapter, but said enumeration shall not be deemed to be exclusive, namely:

1. Horns, Signaling Devices, etc. Violations for disturbing, excessive or offensive noises associated with the use or operation of horns, signaling devices, etc., on automobiles, motorcycles, or any other vehicle, except as provided in Section 9.32.412, shall be prosecuted under applicable provisions of the California Vehicle Code.
2. Radios, Television Sets, Phonographs and Similar Devices

a. Uses Restricted. The use, operation, or permitting to be played, used or operate, any radio, musical instrument, phonograph, television set or other device for the production or reproduction of sound in such manner as to disturb the peace, quiet and comfort of neighboring residents or persons of normal sensitivity residing in the area; or in a manner to exceed those levels set forth in Section 9.32.404 when measured at a distance of twenty-five feet from such device operating in a public right-of-way or public space; Except that, subject to a Noise Permit (issued by the Director of Parks and Recreation who shall serve as the Noise Control Officer in this regard) specifying time, location and other conditions, amplified sound may be permitted within City parks provided that said sound does not exceed a level of 90 decibels fifty feet from the source or exceed those levels set forth in Section 9.32.404 at the par, boundary.

b. Prima Facie Violations. The operation of any such set, instrument, phonograph, television set, machine or similar device in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure or vehicle in which it is located, shall be *prima facie* evidence of a violation of this Chapter.

3. Loud Speaking Amplifiers for Advertising. The use, operation, or the permitting to be played, used or operated of any sound production or reproduction device or machine including, but not limited to, radio receiving sets, phonographs, musical instruments, loudspeakers, and sound amplifiers, for commercial or business advertising purposes in, upon, over or across any street, alley, sidewalk, park, or public property in such a manner as to violate the provisions of this Chapter is prohibited. The provisions shall not be applicable to sound amplifying equipment mounted on any sound truck or vehicle for commercial or noncommercial purposes where the owner or operator complies with the following requirements:

a. The only sound permitted are music or human speech.

b. Operations are permitted between the hours of 8:00 a.m. and 9:00 p.m. or after 9:00 p.m. during public events and affairs of interest to the general public.

c. Sound amplifying equipment shall not be operated unless the sound truck upon which such equipment is mounted is operated at a speed of at least ten (10) miles per hour, except when said truck is stopped or impeded by traffic. Where stopped by traffic the said sound amplifying equipment shall not be operated for longer than one minute at each stop.

d. Sound shall not be issued within one hundred (100) yards of hospitals, schools, churches, or courthouses.

e. The volume of sound shall be controlled so that said volume is not raucous, jarring, disturbing, or a nuisance to persons within the area of audibility and so that the volume of sound shall not exceed a sound level of 65 decibels (on the "A" scale) at a distance of 50 feet from the sound amplifying equipment as measured by a sound level meter which meets the American National Standard ANSI S1 4-1971 or the latest revision thereof.

f. No sound amplifying equipment shall be operated unless the axis of the center of any sound reproducing equipment used shall be parallel to the direction of travel of the sound truck; provided, however, that any sound reproducing equipment may be so placed upon said sound truck as to not vary more than 15 degrees either side of the axis of the center of the direction of travel.

g. No sound truck with its amplifying device in operation shall be driven on the same street past the same point more than twice in a period of one hour.

4. Yelling, Shouting, etc. Disturbing or raucous yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 10 p.m. and 8 a.m. or at any time or place so as to annoy or disturb the quiet, comfort, or repose of neighborhood residents or persons of normal sensitivity within the area for whatever reason, is prohibited.

5. Hawkers and Peddlers. The shouting or crying out of any peddlers, hawkers, and vendors which disturbs the peace and quiet of a neighborhood or persons of normal sensitivity is prohibited. This provision shall not be construed to prohibit the selling by outcry of merchandise, food and beverages at sporting events, parades, fairs, celebrations, festivals, circuses, carnivals, and other similar special events for public entertainment.

6. Drums, Other Instruments. The use of any drum or other instrument or device of any kind for the purpose of attracting attention by the creation of noise within the County is prohibited. This provision shall not apply to any person who is a participant in a school band or legally authorized parade or who has been otherwise duly authorized by the City to engage in such conduct.

7. Animals The keeping or maintenance, or the permitting to be kept or maintained upon any premises owned, occupied, or controlled by any person of any animal which by any frequent or long continued noise shall cause annoyance or discomfort to persons of normal sensitivity in the vicinity; provided, however, that nothing contained herein shall be construed to apply to occasional noises emanating from legally operated dog and cat hospitals, humane societies, pounds, farm and/or agricultural facilities, or areas where keeping of animals are permitted. The written affirmation by two persons having separate residences that violation of the section disturbs the peace and quiet of said persons shall be prima facie evidence of a violation of this Chapter.

8. Schools, Courts, Churches, Hospitals. The creation of any noise on any street, sidewalk, or public place adjacent to any school, institution of learning (except recreational schools), church, court or library, while the same are in use; or adjacent to a hospital, rest home, or long-term medical or mental care facility which noise interferes with the workings of such institution or which disturbs or annoys patients in the hospital, rest home, or long-term medical or mental care facility, provided conspicuous signs are displayed in such streets, sidewalks, or public places indicating the presence of a school, institution of learning, church, court, library, rest home or long-term medical or mental care facility, is prohibited.

9. Steam Whistles The operation, use or causing to be operated or used of any steam whistle attached to any stationary boiler is prohibited except to give notice of the time to start or stop work or as a sound signal of imminent danger.

10. Engines and Motor Vehicles. Any disturbing or raucous noises caused off streets or highways by racing or accelerating the engine of any motor vehicle while moving or not moving, by the willful backfiring of any engine and exhaust from the engine tailpipe or muffler, or from the screeching of tires, is prohibited.

9.32.415 Burglar Alarms. Any building burglar alarm must have an automatic cutoff, capable or terminating its operation within 15 minutes of the time it is activated. Notwithstanding the requirements of the provision, any law enforcement official of the City shall have the right to take such steps as may be reasonable and necessary to disconnect any such alarm during the period of its activation.

No owner of a motor vehicle shall have in operation audible burglar alarm therein unless such burglar alarm shall be capable of terminating its operation within fifteen (15) minutes of the time it is activated. Notwithstanding the requirements of this provision, any law enforcement official of the City shall have the right to take such steps as may be reasonable and necessary to disconnect any such alarm installed on a motor vehicle at any time during the period of its activation.

9.32.416 Aircraft. Violations for exceeding applicable noise level limits as to persons operating aircraft shall be prosecuted under applicable law.

9.32.417 Exemptions.

A. Emergency Work. The provisions of this Chapter shall not apply to any emergency work as defined herein, provided that (1) the Noise Control Officer has been notified in advance, if possible, or as soon as practical after said emergency, and (2) any vehicle device, apparatus, or equipment used, related to or connected with emergency work is designed, modified, or equipped to reduce sounds produces to the lowest possible level consistent with effective operation of such vehicle, device, apparatus, or equipment.

B. Sporting, Entertainment, Public Events The provisions of this Chapter shall not apply to:

1. Those reasonable sounds emanating from authorized school bands, school athletic and school entertainment events.

2. Sporting, entertainment and public events which are conducted pursuant to a license or permit issued by the county of San Diego for noise exceeding criteria, standards or levels as set forth in the chapter.

3. Those reasonable sounds emanating from a sporting, entertainment, or public event; provided, however, it shall be unlawful to exceed those levels set forth in Section 9.32.404 when measured at or within the property lines of any property which is developed and used either in part or in whole for residential purposes unless a variance has been granted allowing sounds in excess of said levels.

C. Federal or State Preempted Activities. The provisions of this chapter shall not apply to an activity to the extent regulation thereof has been preempted by State or Federal law.

D. Minor Maintenance to Residential Property. The provisions of Section 9.32.404 shall not apply to noise sources associated with minor maintenance to property used either in part or in whole for residential purposes provided said activities take place between the hours of 7 a.m. and 8 p.m. on any day except Sunday, or between the hours of 10 a.m. and 8 p.m. on Sunday.

E. Agricultural Operations. The provisions of Section 9.32.404 shall not apply to equipment associated with agricultural operations, provided that, all equipment and machinery powered and air intake silencer in good working order, and provided further that:

1. Operations do not take place between 7 p.m. and the following 7 a.m.; or
2. Such operations and equipment are utilized for the preparation, planting, harvesting, protection or salvage of agricultural crops during periods of potential or actual frost damage or other adverse weather conditions; or
3. Such operations and equipment are associated with agricultural pest control, provided the application is made in accordance with regulations or procedures administered by the County Department of Agriculture; or
4. Such operations and equipment are associated with the application of agricultural chemicals provided the application is made in accordance with acceptable agricultural practices or upon the recommendation of an agricultural specialist.

9.32.418 through 9.32.420 [RESERVED]

9.32.424 Variances. The Noise Control Officer shall evaluate all applications for variances from the requirements of the article and may grant said variances from the requirements of this article and may grant said variances with respect to time for compliance, subject to such terms, conditions, and requirements as he may deem reasonable to achieving compliance with the provisions of the 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 judgement of the Noise Control Officer the time for compliance cannot be reasonably determined, a variance to cause the noise may be issued for a specified period of time, subject to revocation or modification after review by the Noise Control Officer at interim times to be designated by the Noise Control Officer in the variance. In determining the reasonableness of the terms of any proposed variance, the Noise Control Officer shall consider the magnitude caused by the offensive noise, the uses of property within the area of impingement by the noise, operations carried under existing nonconforming rights or conditional use permits or zone 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 general public interest and welfare.

9.32.425 Application For Permits and Variances. Every applicant for a permit or variance required by this Chapter shall file with the Noise Control Officer a written application on a form prescribed by said Officer. The application shall state the name and address of the applicant, the nature of the noise source involved, and such other information as the Noise Control Officer may require. The City shall be notified of any application.

9.32.426 Application Fees Every applicant, except any state or local government agency or public district, shall pay a fee of \$25.00 for each application for variance.

A request for a duplicate permit or variance shall be made in writing to the Noise Control Officer within 10 days after the destruction, loss, or defacement of a permit or variance. A fee of \$5.00 shall be charged, except to any state or local government agency or public district, for issuing a duplicate permit or variance.

9.32.427 Extension Fees If a permit or variance is to be extended beyond the original use termination on date of permit or variance, the extension fee shall be \$25.00.

9.32.428 Actions On Applications The Noise Control Officer shall act, within 30 days, if possible, on an application for a permit or variance and shall notify the applicant in writing by mail or in person of the action taken, namely, approval, conditional approval, or denial. Notice of the action taken shall be deemed to have been given when the written notification has been deposited in the mail, postpaid, addressed to the address shown on the application to furnish further information or further plans or specifications. Failure of the applicant to provide such further information or further plans or specifications within 10 days shall be grounds for denial of the permit or variance.

In the event of denial of a application for a permit or variance, the Noise Control Officer shall notify the applicant in writing of the reasons therefor. Service of the notification may be made in person or by mail, and such service may be proved by the written acknowledgment of the persons served or affidavit of the person making the service. The Noise Control Officer shall not accept a further application unless the applicant has complied with the objections specified by the Noise Control Officer as the reasons for denial.

9.32.429 Applications Deemed Denied. The applicant may deem the application for permit or variance denied if the Noise Control Officer fails to act on the application within 30 days after filing, or within 10 days after applicant furnishes the further information, plans and specifications requested by the Noise Control Officer, whenever is later.

9.32.430 Provision of Sampling and Testing Facilities. A person operating under a permit or variance shall provide and maintain such sampling and testing facilities as specified in the permit or variance.

9.32.431 Appeals. Any person aggrieved by a final determination made under the authority of this chapter may seek review by filing an *appeal pursuant to the procedures within the Municipal Code. A final determination by the Noise Control Officer shall be appealed to the City Council. (*See Chapter 1.12.010 through 1.12.060).