

Chapter 13.40 COMMUNITY NOISE*

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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. 7122-NS § 1, 2009: Ord. 5500-NS § 1 (part), 1982)

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. 7122-NS § 2, 2009; Ord. 5500-NS § 1 (part), 1982)

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 continued, 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. Noncommercial nonamplified 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 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, after balancing (1) the number of decibels and the amount of time the offending noise exceeds the allowed limit, (2) the number of persons affected, and (3) the cost of reducing the decibels or amount of time to come into compliance this chapter, the EHD may deem the noise level to be in compliance with this chapter. Such determination may be appealed to the City Manager within 30 days of the decision. (Ord. 7122-NS § 3, 2009; Ord. 5500-NS § 1 (part), 1982)

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. 7122-NS § 4, 2009; Ord. 5500-NS § 1 (part), 1982)

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 subsection A.2 of this section 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. 7122-NS § 5, 2009: Ord. 5500-NS § 1 (part), 1982)

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 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 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. 7122-NS § 6, 2009: Ord. 5500-NS § 1 (part), 1982)

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 of this section, or subsection B.3 of this section (raucous yelling), subsection B.4 of this section (street sales), subsection B.5 of this section (animal noise), or subsection B.8 of this section (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 of this section (sound devices), subsection B.2 of this section (amplified sound), subsection B.6 of this section (loading/unloading), subsection B.7 of this section (construction/demolition), subsection B.9 of this section (model vehicles), or subsection B.11 of this section (power tools) to arise.

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

Only the measurement procedure must be conducted for a violation of subsection B.12 of this section (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 Section [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 Section [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 subsection 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 ten p.m. and seven a.m. such that the sound therefrom across a residential real property line violates the provisions of Section [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 subsection B.11 of this section.)

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 subsection B.10.b of this section.

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 subsection B.10.b.i of this section 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 Section [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 Section [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. 7122-NS § 7, 2009; Ord. 6026-NS § 1, 1990; Ord. 5500-NS § 1 (part), 1982)

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:

1. The emission of sound for the purpose of alerting persons to the existence of an emergency; or
2. 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 after balancing (1) the number of decibels and the amount of time the offending noise exceeds the allowed limit, (2) the number of persons affected, and (3) the cost of reducing the decibels or amount of time to come into compliance with this chapter. Such determination may be appealed to the City Manager within 30 days of the decision. (Ord. 7122-NS § 8, 2009: Ord. 5500-NS § 1 (part), 1982)

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. Noncompliance with any condition of the variance shall terminate the variance and subject the person holding it to those provisions of this chapter. (Ord. 7122-NS § 9, 2009: Ord. 5500-NS § 1 (part), 1982)

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 noncompliance 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 8:00 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;

7. Such other terms as may be necessary to ensure compliance with the provisions of this chapter;

8. 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;

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. 7122-NS § 10, 2009; Ord. 5500-NS § 1 (part), 1982)

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 Section [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. 7122-NS § 11, 2009; Ord. 5500-NS § 1 (part), 1982)

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. (Ord. 7122-NS § 12, 2009)

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. 7122-NS § 13, 2009; Ord. 5500-NS § 1 (part), 1982)

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 Section [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. (Ord. 7122-NS § 14, 2009)

The Berkeley Municipal Code is current through Ordinance 7470-NS, passed April 5, 2016.

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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