

Chapter 38 - NOISE CONTROL^[1]

Footnotes:

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Cross reference— *Animals and fowl, Ch. 4; building construction regulations, Ch. 6; burglary and robbery alarm systems, Ch. 6A; motor vehicles and traffic, Ch. 17.*

ARTICLE I. - IN GENERAL

Sec. 38.1. - Name.

This chapter shall be known as the "Noise Control Ordinance."

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.2. - Declaration of policy.

It is hereby declared to be the policy of the city to prohibit unnecessary, excessive, and annoying noises from all sources subject to its police power. At certain levels, noise is detrimental to the health and welfare of the citizenry and, therefore, it is in the public interest to systematically proscribe harmful noises.

(Ord. No. 90-21, § 2, 5-23-90)

ARTICLE II. - DEFINITIONS

Sec. 38.3. - Noise.

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

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.4. - Average sound level.

Average sound level shall mean the 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 the latest revision of the American National Standard Specifications for sound level meters. Average sound level is also called equivalent continuous sound level (Leq.).

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.5. - Decibel.

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

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.6. - Emergency work.

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.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.7. - Sound level.

Sound 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 weighting employed is not indicated, the A-weighting is implied.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.8. - Sound level meter.

Sound level meter shall mean an instrument, including a microphone, an amplifier, readout, and frequency weighting networks for the measurement of sound levels which meets or exceeds the requirements pertinent for type S2A meters in the latest revision of the American National Standards Institute Specification for sound level meters.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.9. - Nuisance.

Nuisance shall be that condition constituting a "public nuisance" as defined by state law.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.10. - Base district.

Base district shall mean those land use regulations as similarly referenced in the Oceanside Zoning Ordinance.

(Ord. No. 90-21, § 2, 5-23-90)

ARTICLE III. - SOUND LEVEL LIMITS

Sec. 38.11. - Sound level measurement.

The city shall establish appropriate standards and procedures to ensure the accuracy of sound level measurements. Any such measurements shall be made consistent with these standards and procedures.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.12. - General sound level limits.

(a) Except for exempted activities and sounds as provided in this chapter or exempted properties as referenced in section 38.15, it shall be unlawful for any person to cause or allow the creation of any noise to the extent that the one-hour average sound level, at any point on or beyond the boundaries of the property in the applicable base district zone on which the sound is produced exceeds the applicable limits set forth below:

Sound Level Limits (Decibels)

Base District Zone	7:00 a.m. to 9:59 p.m.	10:00 p.m. to 6:59 a.m.
(1) Residential Districts:		
RE (Residential Estate)	50	45
RS (Single-Family)	50	45
RM (Medium Density)	50	45

RH (High Density)	55	50
RT (Residential Tourist)	55	50
(2) C (Commercial)	65	60
(3) I (Industrial)	70	65
(4) D (Downtown)	65	55
(5) A (Agricultural)	50	45
(6) OS (Open Space)	50	45

(b) Limits for planned developments. In addition to the sound level limits established above, there is hereby established sound level limits for PD (planned development) base district zones.

For any residential land use within a PD zone, the sound level limit is that limit which would be otherwise applicable in the residential district zone (RE, RS, RM, RH or RT) corresponding to density of the residential development in that PD zone.

For any nonresidential land use within a PD zone, the sound level limit is that limit corresponding to the C (commercial) or I (industrial) zone which would be applicable to that use if not subject to the PD zone. For the purposes of this section, a land use shall be that use shown on a duly approved planned development plan or specific plan.

(c) Limits for joint boundaries. When property lines form the joint boundary of two (2) base district zones, the sound level limit shall be the arithmetic mean of the limit applicable to each of the two (2) zones.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.13. - Noncompliance with sound level limits; extensions; variations.

If the noise resulting from any activity, event, or enterprise in any nonresidential base district zone shall exceed the applicable area sound level limit prescribed in section 38.12 on three (3) or more days during any thirty-day period, the code enforcement division shall serve a notice of noncompliance on the owner of the property which produces the noise. Service shall be in the manner prescribed by section 38.27. Such notice shall indicate the applicable sound level limit for the area, identify when and where excessive sound level measurements were taken, and report the sound level measured during each such measurement.

Within thirty (30) days of service of the notice of noncompliance, the owner of the property shall do one of the following:

- (1) Reduce the level of noise produced on the property so as to conform to the applicable sound level limit referenced in the notice;

- (2) Deliver a written application to the code enforcement division for an extension of time in which to bring the noise into conformance with the referenced sound level limit; such extension may be granted for a period not to exceed thirty (30) days; or
- (3) Deliver to the code enforcement division a written objection to any or all of the findings indicated, identified, or reported in the notice; the code enforcement division shall rule on the validity of such objections within fifteen (15) days of such delivery and, if found to be invalid, shall order the owner to comply with the applicable sound level limit; or
- (4) Apply for a variation from the sound level limit otherwise applicable. The city council shall hear applications for a variation during a duly noticed public hearing. The notice requirements shall be the same as these required by the Oceanside Zoning Ordinance in connection with an application for use permit or variance.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.14. - Required findings for the granting of a variation.

The city council shall approve the application for a variation on the basis of the application, materials, and testimonies submitted to it if it finds that the health and welfare benefits of reducing the noise so as to conform with the applicable sound level limit are clearly outweighed by the burden on the applicant and the community in ameliorating, reducing, or modifying the noise so as to conform with the limit.

In ruling on the application for the variation, the city council shall consider the following:

- (1) The characteristics and conditions in section 38.16;
- (2) The nature and zoning of the area within which the noise emanates;
- (3) The density of inhabitation of the area in which the noise emanates;
- (4) The economic impact on the applicant of bringing the subject property into conformance with the sound level limit; and
- (5) The impact of the proposed variation on the health, safety, and welfare on persons exposed to sound levels thereby permitted.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.15. - Exemptions for construction, maintenance or other public improvement activities by government agencies or public utilities.

Notwithstanding anything in this chapter to the contrary, the city manager, or the manager's designee, on a case-by-case basis, may authorize construction, maintenance or other public improvement activities by a government agency or a public utility, that exceed the noise, duration or hour of work limits established by this chapter, upon a determination that the authorization furthers the public interest.

(Ord. No. 97-15, § 1, 9-3-97)

ARTICLE IV. - PROHIBITED NOISES

Sec. 38.16. - General prohibition.

It shall be unlawful for any person to make, continue, or cause to be made or continued, within the limits of the City of Oceanside, any disturbing, excessive, or offensive noise which causes discomfort or annoyance to reasonable persons of normal sensitivity.

The following characteristics and conditions shall be considered in determining whether there exists a violation of the general prohibition of this section:

- (1) The level of noise;
- (2) Whether the nature of the noise is usual or unusual;
- (3) The level of background noise;
- (4) The time of day or night the noise occurs;
- (5) The duration of the noise;
- (6) Whether the noise is recurrent, intermittent, or constant.

It shall be rebuttably presumed that any noise which complies with the area sound level limits prescribed by section 38.12 is not in violation of the general prohibition of this section.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.17. - Specific noises prohibited.

Notwithstanding the rebuttable presumption referenced in section 38.16, the following acts are declared to cause disturbing, excessive, or offense noises in violation of this article although such enumeration shall not be deemed to be exclusive:

- (a) *Horns, signaling devices etc.* The intentional sounding of any horn or other signaling device on any automobile, motorcycle, or other vehicle, except as a danger warning; the creation by means of any such signaling device of any unreasonably loud or harsh sound; and the sounding of any such device for any unnecessary and unreasonable period of time.
- (b) *Radios, phonographs, etc.* The use or operation of any sound production or reproduction device, radio receiving set, musical instrument, drum, phonograph, television set, loud speaker, sound amplifier, or other sound machine or device used for the purpose of producing or reproducing sound in such a manner as to disturb the peace, quiet, or comfort of any reasonable person of normal sensitivity. The operation of any such machine or device in such a manner as to be plainly audible at a distance of fifty (50) feet from its location shall be prima facie evidence of a violation of this section.
- (c) *Loud-speakers, amplifiers for advertising.* The using, operating, or permitting to be played, used, or operated of any radio receiving set, musical instrument, phonograph, loud-speaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public. This section shall not be applicable to ice cream vending vehicles as defined and regulated by chapter 12, article VII of this Code.
- (d) *Yelling, shouting, etc.* Yelling, shouting, hooting, whistling, or singing on the public streets, particularly between the hours of 10:00 p.m. and 7:00 a.m. or at any time or place so as to annoy or disturb the quiet, comfort, or repose of persons in any office, or in any dwelling, hotel, or other type of residence or any persons in the vicinity.
- (e) *Animals, birds, etc.* The keeping of any animal or bird which by causing frequent or long-continued and unreasonably loud noise shall disturb the comfort or repose of any person of normal sensitivity in the vicinity.
- (f) *Exhausts.* The noise emanating into the open air of the noise from the exhaust of any stationary internal-combustion engine, motorboat, or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- (g) *Hawkers, peddlers.* The shouting and crying of peddlers, hawkers, and vendors which disturbs the peace and quiet of the persons in the vicinity.
- (h) *Pile drivers, hammers, etc.* The operation between the hours of 10:00 p.m. and 7:00 a.m. of any pneumatic or air hammer, pile driver, steam shovel, derrick, steam, or electric hoist, parking lot cleaning equipment or other appliance, the use of which is attended by loud or unusual noise.

(Ord. No. 90-21, § 2, 5-23-90; Ord. No. 93-05, § 1, 2-17-93)

ARTICLE V. - EXEMPTIONS

Sec. 38.18. - Emergency work.

The provisions of this chapter shall not apply to any emergency work as defined herein, provided that the city has been notified as soon as practical and any vehicle, device, apparatus or equipment used with the emergency work is designed, modified, or equipped to reduce sounds produced to the lowest possible level consistent with effective operation of such vehicle, device, apparatus, or equipment.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.19. - Sporting, entertainment, or public events.

The provisions of this chapter shall not apply to:

- (a) Those reasonable sounds emanating from authorized school activities.
- (b) Those reasonable and typical sounds emanating from social gatherings.
- (c) Sporting, entertainment and public events which are conducted pursuant to a license or permit issued by the city.
- (d) Those reasonable sounds emanating from a sporting, entertainment, or public event except that it shall be unlawful to exceed those sound level limits set forth in section 38.12 when measured at the property lines of any property which is used for residential purposes.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.20. - Minor maintenance to or improvement of residential property.

The provisions of this chapter shall not apply to noise sources associated with minor maintenance to or improvement of property used either in part or in whole for residential purposes provided said activities take place between the hours of 7:00 a.m. and 8:00 p.m. on any day except Sunday or between the hours of 10:00 a.m. and 8:00 p.m. on Sunday.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.21. - Preempted activities.

The provisions of this chapter shall not apply to any activity to the extent regulation thereof has been preempted by state or federal law or which is a necessary or appropriate means of complying with health or safety requirements imposed by state or federal law.

(Ord. No. 90-21, § 2, 5-23-90)

ARTICLE VI. - ENFORCEMENT

Sec. 38.22. - Violations—Infractions and misdemeanors.

Any person violating any of the provisions of this chapter shall be deemed guilty of an infraction for the first two (2) violations within any one-year time period. Violations shall be punishable pursuant to section 1.7(b) of the Oceanside City Code.

A third violation within any one-year time period may be prosecuted as either an infraction punishable pursuant to section 1.7(b)(3) of the City Code or as a misdemeanor, punishable by a fine not exceeding five hundred dollars (\$500.00), or imprisonment for a term not exceeding six (6) months, or by both such fine and imprisonment.

Each day any such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.23. - Same—Public nuisance.

As an additional remedy, the operation or maintenance of any device instrument, vehicle, machinery, or other item in violation of any provision of this chapter shall be deemed and is declared to be a public nuisance and may be subject to summary judicial abatement in order to preserve or protect the public health, safety, or welfare by a restraining order or injunction or by abatement and assessment in accordance with the procedures and processes set forth in this article.

Any person owning, leasing, occupying, or having charge of any premises in this city who maintains, uses, or allows to be used, in such a manner so as to make, create, or allow noise which is a public nuisance is subject to having the nuisance abated pursuant to the procedures and processes set forth in sections 38.22 through 38.33.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.24. - Declaration of nuisances.

Whenever an officer of the code enforcement division, or such other city official as may be designated by the city manager, determines that any premises within the city is maintained, used, or allowed to be used so as to be a public nuisance within the meaning of section 38.9 then that person shall cause notice to be given in the manner provided in this chapter for the holding of a public hearing to ascertain whether the same does in fact constitute such public nuisance, the abatement of which is appropriate under the police powers of the city.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.25. - Form of notice of hearing.

Notice of the time and place of hearing before the city council shall be entitled, "NOTICE OF HEARING", in letters not less than one inch in height and shall be substantially in the following form:

"NOTICE OF HEARING TO DETERMINE EXISTENCE OF PUBLIC NUISANCE AND TO ABATE IN WHOLE OR PART. Notice is hereby given that on the _____ day of _____/_____/_____, 19_____, at the hours of _____ of said day, the City Council of the City of Oceanside will hold a public hearing in the Council Chambers of the Oceanside City Hall, located _____/_____/_____ at Oceanside, California, to ascertain whether certain premises situated in the City of Oceanside, State of California, known and designated as _____, in said City, and more particularly described as _____, constitute a public nuisance subject to noise abatement by means necessary and appropriate to reduce, modify, or eliminate such noise. If said premises, in whole or part, are found to constitute a public nuisance as defined by the Oceanside City Code and if the same are not promptly abated by the owner, such nuisances may be abated by municipal authorities and upon such abatement cost will constitute a lien upon such land until paid. Said alleged violations consist of the follow: _____. Said methods of abatement available are: _____/_____/_____. All persons having any objection to, or interest in said matters are hereby notified to attend a meeting of the City Council of the City of Oceanside to be held on the _____ day of _____/_____/_____, 19_____, the hour of _____, when their testimony and evidence will be heard and given due consideration.

DATED: _____

CODE ENFORCEMENT OFFICER

(or title of such other city officer designated by the city manager)"

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.26. - Posting and serving notice.

An officer of the code enforcement division or such other city official as may be designated by the city manager, shall cause to be served upon the owner of each of the affected premises a copy of said notice and shall cause a copy thereof to be conspicuously posted on each of the affected premises.

Said notice shall be posted and served at least fifteen (15) days before the time fixed for such hearing. Proof of posting and service of such notices shall be made by declaration under penalty of perjury filed with the city council.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.27. - Form of proper service of notice.

Service of said notice shall be by personal service upon the owner of the affected premises or by depositing a copy of said notice in the U.S. mail enclosed in a sealed envelope and with postage thereon fully prepaid. Said mail shall be registered or certified and addressed to the said owner, and if there is no known address, then in care of the property address. The service is complete at the time of such deposit. "Owner," as used herein, shall mean any person in possession and also any person having or claiming to have any legal or equitable interest in said premises, as disclosed by a current title search from any accredited title company. The failure of any person to receive such notice shall not affect the validity of the proceedings hereunder.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.28. - Hearing by city council.

At the time stated in the notices, the city council shall hear and consider all relevant evidence, objections, or protests, and shall receive testimony from owners, witnesses, city personnel, and interested persons relative to such alleged public nuisance and the means necessary and appropriate to reduce, modify, or eliminate such nuisance from such premises. Said hearing may be continued from time to time.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.29. - Decision of city council.

Upon or after the conclusion of said hearing, the city council shall, based upon such hearing, determine whether the premises, or any part thereof, as maintained, used, or allowed to be used in a manner constitute a public nuisance. If the city council finds that such public nuisance does exist and that there is sufficient cause to order abatement of the nuisance, the city council shall adopt a resolution setting forth its findings and ordering the owner or other person having charge or control of such premises to abate such nuisance by having such premises, buildings, structures, or activities thereon altered or eliminated in the manner and by the means specifically set forth in its resolution. Such resolution shall set forth times within which such work shall be commenced and completed by the owner. The decision and order of the city council shall be final.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.30. - Limitation of filing judicial action.

Any owner or other interested person having any objections or feeling aggrieved at any proceeding taken by the city council in ordering the abatement of any public nuisance under the provisions of this chapter must bring an action to contest such decision within thirty (30) days after the date of such decision of the city council. Otherwise all objections to such decision shall be deemed waived.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.31. - Service of resolution to abate.

A copy of the resolution of the city council ordering the abatement of said nuisance shall be served upon the owners of said property in accordance with the provisions of section 38.27 and shall contain a detailed list of needed corrections, alterations, and/or other noise abatement methods. Any property owner shall have the right to have any such premises or activities thereon altered or eliminated in accordance with said resolution and at his own expense provided the same is done prior to the expiration of abatement period set forth in the resolution. Upon such abatement in full by the owner, then proceedings thereunder shall terminate.

If such nuisance is not completely abated by the owner as directed within the designated abatement period, then the city manager, or such other city official as may be designated by him, is authorized and directed to cause the same to be abated by the city forces or private contract, and the city manager (or his designated agents) is expressly authorized to enter upon said premises for such purpose. Upon request of the designated official, other city departments shall cooperate fully and shall render all reasonable assistance in abating any such nuisance.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.32. - Record of cost for abatement.

- (a) The city manager, or such other city official as may be designated by him, shall keep an account of the cost (including incidental expenses) of abating such nuisances on each separate lot or parcel of land where the work is done, and shall render an itemized report in writing to the said city council showing the cost of noise abatement at said premises; provided that before such report is submitted to said city council, a copy of the same shall be posted for at least five (5) days upon such premises together with a notice of the time when the report shall be heard by the city council for confirmation.
- (b) The city council shall set the matter for hearing to determinate the correctness or reasonableness, or both, of such costs.
- (c) A copy of said report and notice shall be served upon the owners of said property in accordance with the provisions of section 38.27, at least five (5) days prior to the date of the city council hearing.
- (d) Proof of said posting and service shall be made by declaration under penalty of perjury filed with city clerk.
- (e) The term "incidental expenses" shall include, but not be limited to, the actual expenses and costs of the city in preparation of notices, specifications, and contracts and in inspecting the work, and the costs of printing and mailing required hereunder.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.33. - Report; hearing and proceedings.

At the time and place fixed for receiving and considering said report, the city council shall hear and pass upon the report of such costs of abatement, together with any objections or protests. Thereupon the city council may make such revision, correction, or modification in the report as it may deem just, after which by resolution the report, as submitted or as revised, corrected, or modified, shall be confirmed. The decision of the city council on all protests and objections which may be made shall be final and conclusive.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.34. - Assessment of costs against property; lien.

The total cost for abating such nuisance, as so confirmed by the city council, shall constitute a special assessment against the respective lot or parcel of land to which it relates, and upon recordation in the office of the county recorder of a notice of lien, as so made and confirmed, shall constitute a lien on said property for the amount of such assessment.

- (a)

After such confirmation and recordation, a certified copy of such decision shall be sent to the tax division of the county auditor-controller's officer, whereupon it shall be the duty of said auditor-controller to add the amounts of the respective assessments to the next regular tax bills levied against said respective lots and parcels of land for municipal purposes, and thereafter said amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure under foreclosure and sale in case of delinquency as provided for ordinary municipal taxes; or

- (b) After such recordation such lien may be foreclosed by judicial or other sale in the manner and means provided by law.
- (c) Such notice of lien for recordation shall be in form substantially as follows:

"NOTICE OF LIEN—CLAIM OF CITY OF OCEANSIDE.

Pursuant to the authority vested by the provisions of Section 38.29 of the Oceanside City Code, the City Manager of the City of Oceanside (or his designated agents) did on or about the _____ day of _____/_____/_____, 19_____, cause the premises hereinafter described to be altered, in order to abate a public nuisance on said real property; and the City Council of the City of Oceanside did on the _____ day of _____/_____/_____, 19_____, assess the cost of such abatement upon said real property hereinafter described; and the same has not been paid nor any part thereof; and that said City of Oceanside does hereby claim a lien on such abatement in the amount of said assessment, to wit: the sum of \$_____; and the same shall be a lien upon said real property until the same has been paid in full and discharged of record. The real property hereinbefore mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in the City of Oceanside, County of San Diego, State of California, and more particularly described as follows:

(DESCRIPTION)

DATED: ____

(ACKNOWLEDGEMENT)?>

CityManageroftheCityofOceanside."

(Ord.No.90-21,§2,5-23-90)

Sec. 38.35. - Violations.

- (a) The owner or other person having charge or control of any such buildings or premises maintaining any public nuisance as defined in this chapter, or who violates any order of abatement made pursuant to section 38.29 is guilty of a misdemeanor.
- (b) Any person who removes any notice or order posted as required in this chapter is guilty of a misdemeanor.

(Ord. No. 90-21, § 2, 5-23-90)

Sec. 38.36. - Severability.

If any section, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The city council hereby declares that it would have passed this ordinance and adopted this chapter and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

(Ord. No. 90-21, § 2, 5-23-90)