

ARTICLE 1

PUBLIC NUISANCES

SEC. 4-1.00 PUBLIC NUISANCE. DEFINITION. Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable or safe enjoyment of life or property of the community, or any portion thereof, or neighborhood therein, is a public nuisance.

SEC. 4-1.01 CERTAIN NUISANCES DEFINED. Certain specified actions or things hereinafter mentioned are hereby declared nuisances. The enumeration thereof shall not be deemed exclusive, but merely illustrative, it being the intent and purpose of this Article to include as nuisances, all actions or things of the character described in Section 4-1.00 hereof.

NOISE REGULATIONS

(As Amended by Ordinance 11-03, adopted March 22, 2011)

SEC 4-1.02 UNREASONABLE NOISES. It shall be unlawful for any person to disturb the peace, quiet, and comfort of the community, or any portion thereof, or neighborhood therein, by creating or causing to be created any unreasonable noises, as hereinafter defined, in the City of Hayward.

SEC. 4-1.03 APPLICATION AND ENFORCEMENT; DEFINITIONS.

- (a) Unless otherwise exempt as provided herein, these regulations shall apply to noises from any and all sources in the City, except noises originating from operations at the Hayward Executive Airport, which shall be regulated in the manner provided for in the Airport Noise Ordinance, and from animals, which shall be administered in accordance with the City's Animal Control Ordinance.
- (b) The regulations allow for different methods of enforcement. The appropriate method of enforcement shall be determined by the Enforcement Officer.
- (c) Definitions. The following words and phrases have the meanings set forth in this subsection, unless the context in which any such word or phrase is used clearly requires another meaning:

dB. "dB" means decibel as herein defined.

dBA. "dBA" means decibels measures on an A-weighted scale, as herein defined in "Noise Level" below.

Decibel. "Decibel" or dB means a unit measure of sound (noise) level relative to a standard reference sound on a logarithmic scale. The decibel level of a given sound is determined as twenty times the logarithm to the base 10 of the ratio of the pressure in micronewtons per square meter of the sound being measured to the standard reference sound pressure of 20 micronewtons per square meter (0.0002 microbar).

Emergency response activities. “Emergency response activities” means activities necessary to restore, preserve, protect, or save lives or property from imminent danger of loss or harm.

Enforcement Officer. The “Enforcement Officer” for purposes of these regulations is the City Manager or her/his designee.

Noise Level. “Noise Level” means the level of noise measured in decibels on the A-weighted scale with a sound level meter satisfying at least the applicable requirements for Type 1 or Type 2 sound level meters as defined in the most recent American National Standard Specifications. The meter shall be set for slow response speed, except that for impulse noises or rapidly varying sound levels, fast response speed may be used. For outside measurements, the microphone shall not be less than four feet above the ground, at least four and one-half feet distant from walls or similar large reflecting surfaces, and shall be protected from the effects of wind noises and other extraneous sounds by the use of screens, shields, or other appropriate devices. For inside measurements, the microphone shall be at least three feet distant from any wall, and the average measurement of at least three microphone positions throughout the room shall be determined.

Property Plane. “Property Plane” means a vertical plane including the property line which determines the property boundaries in space.

Public Property. “Public Property” means property owned by the City of Hayward.

Unreasonable Noise. “Unreasonable Noise” means noise produced by human voice, machine, device, or any combination thereof, that is so loud that it disturbs the peace and quiet of any neighborhood or impinges upon the quiet enjoyment of property, such that the average person of normal sensitivity would find the noise objectionable.

SEC. 4-1.03.1 NOISE RESTRICTION BY DECIBEL.

(a) Residential Property Noise Limits.

1. No person shall produce or allow to be produced by human voice, machine, device, or any combination of same, on residential property, a noise level at any point outside of the property plane that exceeds seventy (70) dBA between the hours of 7:00 a.m. and 9:00 p.m. or sixty (60) dBA between the hours of 9:00 p.m. and 7:00 a.m.
2. No person shall produce or allow to be produced by human voice, machine, device, or any combinations of same, on multifamily residential property, a noise level more than sixty (60) dBA three feet from any wall, floor, or ceiling inside any dwelling unit on the same property, when the windows and doors of the dwelling unit are closed, except within the dwelling unit in which the noise source or sources may be located.

- ##### (b) Commercial and Industrial Property Noise Limits. Except for commercial and industrial property abutting residential property, no person shall produce or allow to be produced by human voice, machine, device, or any other combination of same, on commercial or industrial property, a noise level at any point outside of the property plane that exceeds seventy (70) dBA. Commercial and industrial property that abuts residential property shall be subject to the residential property noise limits set forth in subsections (a)(1) and (2) above.

- (c) Public Property Noise Limits. Except as otherwise provided in these regulations, no person shall produce or allow to be produced on public property, by human voice, machine, device, or any combination of same, a noise level that exceeds sixty (60) dBA at a distance of 25 feet or more from the source. Noise from activities of the City of Hayward is exempted from these regulations.
- (d) When the Enforcement Officer responds to an initial complaint of unreasonable noise and perceives activities or circumstances that violate Section 4-1.03.1, the Enforcement Officer may issue a written warning or a citation, specifying those activities or circumstances that constitute a violation of these regulations.

SEC. 4-1.03.2 UNREASONABLE NOISE NOT MEASURED BY DECIBEL EMANATING FROM PRIVATE PROPERTY. This section contains a separate and independent method of determining whether a violation of the noise regulations has occurred. No person shall willfully or negligently make, produce or allow to be produced, at any time, any unreasonable noise. Enforcement of this section shall not require the use of a sound level meter.

- (a) A violation of this section shall be proven by reference to one or more of the following criteria:
 - 1. The volume or loudness of the noise (based on the distance away from the source at which the noise can be clearly heard);
 - 2. The pitch or frequency (i.e., vibrating sound waves) of the noise;
 - 3. Whether the nature of the noise is usual or unusual;
 - 4. Whether the origin of the noise is natural (i.e., caused or produced by a person or persons) or unnatural;
 - 5. The tonal or rhythmic quality of the noise;
 - 6. Whether the noise is recurrent, intermittent, or constant;
 - 7. Whether the noise is from a commercial or noncommercial activity;
 - 8. If the noise is from a commercial activity, whether the particular use or activity is permitted in the area, and whether the noise could be reasonably expected to derive from the use or activity;
 - 9. Whether the noise is a necessary attribute of a particular use or activity (i.e., routine solid waste collection or a properly functioning mechanical device);
 - 10. The proximity of the noise to residential sleeping facilities;
 - 11. The proximity of the noise to offices or places of work;
 - 12. The number of persons affected, or the density of inhabitation of the area;
 - 13. The nature or zoning of the area within which the noise emanates or in which the impact of the noise occurs;
 - 14. The amount and type of background noise, if any;
 - 15. The time of the day or night the noise occurs (indicating the relationship of the noise to the normal activities that occur at a given time);
 - 16. The day of the week; and
 - 17. The duration of the noise.
- (b) When the Enforcement Officer responds to an initial complaint of unreasonable noise and perceives activities or circumstances that violate Section 4-1.03.2, the Enforcement Officer may issue a written warning to any individual exercising or claiming control of the property or assuming responsibility of the activities or circumstances.

- (c) If, within seventy-two (72) hours following the issuance of a written warning, a second complaint concerning unreasonable noise at the same location is received, then the Enforcement Officer may ask the complainants to sign a statement indicating the manner in which the complainants were disturbed and agreeing to appear as a witness at an administrative hearing or trial. If the Enforcement Officer obtains signed statements from at least two complainants who do not reside at the same address, then the Enforcement Officer may issue a citation to a resident of the property upon which the activities or circumstances exist or to any individual exercising or claiming control of the property or assuming responsibility for the activities or circumstances.

SEC. 4-1.03.3 NOISE FROM VEHICLES.

- (a) No person shall use or operate any radio, tape player, record player, compact disc player, or any similar device in or on a vehicle located on any public property within the City in a manner that is audible to a person of normal hearing sensitivity more than twenty-five feet from such vehicle, nor shall any person use or operate any such device on or in a vehicle located on private property in a manner that renders the device audible to a person of normal hearing sensitivity more than twenty-five feet from the vehicle or beyond the property line of such private property, whichever is greater. Noise from a radio, tape player, record player, compact disc player, or other similar device in or on a vehicle located on a public highway shall be regulated in the manner provided for by the California Vehicle Code.
- (b) Vehicle horns, or other devices primarily intended to create a loud noise for warning purposes, shall not be used when a situation endangering life, health or property is not imminent.

SEC. 4-1.03.4 CONSTRUCTION AND ALTERATION OF STRUCTURES; LANDSCAPING ACTIVITIES. Unless otherwise provided pursuant to a duly-issued permit or a condition of approval of a land use entitlement, the construction, alteration, or repair of structures and any landscaping activities, occurring between the hours of 10:00 a.m. and 6:00 p.m. on Sundays and holidays, and 7:00 a.m. and 7:00 p.m. on other days, shall be subject to the following:

- (a) No individual device or piece of equipment shall produce a noise level exceeding eighty-three (83) dBA at a distance of twenty-five (25) feet from the source. If the device or equipment is housed within a structure on the property, the measurement shall be made outside the structure at a distance as close as possible to twenty-five (25) feet from the equipment.
- (b) The noise level at any point outside of the property plane shall not exceed eighty-six (86) dBA.
- (c) During all other times, the decibel levels set forth in Section 4-1.03.1 shall control.

SEC. 4-1.03.5 CATEGORICAL EXEMPTIONS. The following activities or sources of noise are exempt from the provisions of these regulations:

- (a) Alarms and Warning Devices: Aural alarms or warning devices, including but not limited to fire alarms, burglar alarms, and emergency vehicle sirens and air horns. However, if a standard or minimum noise level is prescribed for particular type of aural alarm or warning device by the laws or regulations of the State of California, the noise emitted from such alarm or warning device shall not exceed such standard or minimum level by more than three (3) dBA.
- (b) Emergency Response Activities: Noise from emergency response activities.
- (c) Events at Which No Mechanical or Amplifying Equipment is Employed: Noise from events conducted lawfully and without the use of sound of any kind that is mechanically produced or amplified or focused by any means.
- (d) Audio Equipment Used by Public Safety Officers: Noise from audio equipment used or operated by public safety officers in the performance of their duties.
- (e) Generators Required for Medical Purposes; Power Outages: Noise from generators required for medical purposes or during power outages.

SEC. 4-1.04 EXEMPTIONS AUTHORIZED BY PERMIT - IMMEDIATE COMPLIANCE IMPRACTICAL OR UNREASONABLE.

- (a) A conditional noise permit may be granted to temporarily exempt a particular source of noise from one or more provisions of these regulations if the applicant can show that, notwithstanding the application of all available noise abatement techniques, the immediate compliance with the requirements of these regulations would be impractical or unreasonable. The term of a noise permit shall not exceed six months, provided that the term may be renewed upon a further showing of good cause and that any extension is conditioned upon a schedule of compliance with the requirements of these noise regulations, including the details of methods to effectuate that compliance.
- (b) Applications for a conditional noise permit shall be made to the department assigned by the City Manager to process such permits upon a form provided therefor. The City Manager, or his or her designee, may deny or approve an application, subject to such conditions or limitations as deemed advisable and taking into consideration the purpose and intent of these regulations.

SEC. 4-1.04.1 EXEMPTIONS AUTHORIZED BY PERMIT- SPECIAL EVENTS ON PUBLIC PROPERTY WITH NOISE PRODUCED BY MECHANICAL OR AMPLIFYING EQUIPMENT.

- (a) The City Manager, or his or her designee, may issue a permit exempting from any special event conducted on public property at which noise is produced by any mechanical or amplifying equipment which will, or is likely to, exceed the noise limits imposed by these regulations, if it is determined that:
 1. The event is of interest to a substantial number of persons residing in the City;

2. The event is open to all persons residing in the City, subject only to the payment of a reasonable fee, if any, by those persons attending the event; and
 3. Compliance with these regulations would unreasonably interfere with the conduct of the event.
- (b) Applications for a permit under this subsection shall be filed at least 14 days prior to the date the special event is to take place. Such application shall be in the form prescribed by the City Manager and shall contain the name of the person or persons sponsoring the event, a description of the event, the date and times the event is scheduled to take place, and such other information as may be required.
- (c) Following the filing of an application for a permit under this section, the City Manager, or his or her designee, shall issue a permit granting such exemption if it is found that such special event complies with all the requirements of this subsection. However, reasonable conditions may be imposed on the conduct of the special event, including limitations on the dates and times during which the event may take place, limitations on the level of noise produced at the event, and a requirement that the permittee take reasonable measures as may be prescribed to mitigate the adverse effect of the noise produced at the event.
- (d) If a separate permit for an activity covered by this subsection is required by City policy or practice, then the applicant shall not be required to obtain a noise permit hereunder.

SEC. 4-1.04.2 CONFLICT OF LAW. The requirements of these Noise Regulations do not supersede any obligations and/or requirements imposed under the City's Zoning Ordinance. In the event of a conflict between these regulations and the Zoning Ordinance, the more restrictive provision controls.

SEC. 4-1.04.3 CUMULATIVE REMEDIES; PENALTIES; ADMINISTRATIVE HEARINGS.

- (a) Any person who violates any provision of these noise regulations is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. The remedies provided in the noise regulations shall be cumulative and in addition to any other procedures provided in the Hayward Municipal Code or by state law for the abatement of any of the conditions described herein, and abatement hereunder shall not prejudice or affect any other action, civil or criminal, for the maintenance of any such condition.
- (b) In addition to all other remedies or penalties provided by law, a violation of these regulations is punishable by administrative penalties as set forth in Chapter 1, Article 7 of the Hayward Municipal Code.
- (c) Any person subject to administrative penalties pursuant to these regulations shall have the right to request an administrative hearing in accordance with Hayward Municipal Code Sections 1-7.07 through 1-7.10, inclusive. The right to judicial review shall be governed by Section 1-7.13 Administrative Citation, Right to Judicial

Review, of the Hayward Municipal Code. The administrative penalties imposed by this section do not preclude other potential civil actions or criminal prosecution under any other provision of law.

SEC. 4-1.05 SMOKE AND SOOT. It shall be unlawful for any person to cause, suffer or allow dense smoke to be discharged from any building, place, premises, stationary or locomotive engine or motor vehicle within the City of Hayward, or to cause, suffer or allow soot, ashes, or cinders to be discharged from any such facility to such an extent that such soot, ashes, or cinders are blown upon or fall upon adjacent property.

SEC. 4-1.06 FENCES. It shall be unlawful for any person to cause, suffer or allow any fence, or other structure in the nature of a fence, unnecessarily exceeding six (6) feet in height, to be erected or maintained along or near the property lines of any residence lot in the City of Hayward. Such a fence or structure shall be deemed a private nuisance.

SEC. 4-1.07 DUMPING IN STREAMS. It shall be unlawful for any person to dump any junk, refuse, garbage, dirt or any other material in any stream, creek, watercourse or stream bed, or within the banks of the same, in the City of Hayward, without written permission so to do from the Director of Public Works.

SEC. 4-1.10 STAGNANT WATER. It shall be unlawful for any person to maintain any cesspool, water holes, unsealed water tanks, or other structure or condition upon any premises owned, leased or used by him within the City of Hayward, having a tendency to breed, promote, invite or maintain mosquitoes, and the same is hereby declared to be a public nuisance.

It shall be the duty of the Chief of Police to investigate all premises and to notify any such person maintaining such nuisance to abate the same within ten (10) days and on failure of compliance to summarily abate the same.

SEC. 4-1.15 DISMANTLING OR REPAIR OF MOTOR VEHICLES IN THE OPEN IN RESIDENTIAL DISTRICTS. PERMIT REQUIRED. It shall be unlawful for any person to repair or dismantle in the open in any residential district of the City of Hayward, any automobile, boat, or other vehicle or conveyance without first having obtained a permit to do so.

Application for a permit shall be made to the Police Department on forms provided for such purpose. Applicant shall furnish all the following:

Name and address of applicant; address at which proposed work is to be done; written consent of owner of premises if other than applicant; description of conveyance to be dismantled or repaired and a statement of work to be done; estimated time necessary to complete the work; and such other information as may be required by said department.

All applications shall be referred to the Fire Chief for review prior to the granting of any permit. Where such work can be done without creating a police problem or a fire hazard a permit shall be granted for the doing of the work described in said application.

The permit so granted shall specify the time period in which the work shall be accomplished, which time period shall not be more than fifteen (15) days. Work shall be completed within the time limit specified, or any extension granted for reasonable cause shown.