

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

ORDINANCE NO. 2003 - 005

AN ORDINANCE REPEALING SECTION 4-1-510 OF THE SAN LEANDRO MUNICIPAL CODE AND ADDING A NEW ARTICLE 11 TO CHAPTER 4-1 TO THE SAN LEANDRO MUNICIPAL CODE RELATING TO NOISE

The City Council of the City of San Leandro ORDAINS as follows:

SECTION 1. Section 4-1-510 of the City of San Leandro Municipal Code is hereby repealed.

SECTION 2. The City of San Leandro Municipal Code is hereby amended by adding a new Article 11, entitled “Noise,” to Chapter 4-1 of said Code, as follows:

4-1-1100 SHORT TITLE

This Article shall be known and may be cited as the “Noise Ordinance.”

4-1-1105 POLICY AND PURPOSE

It is hereby declared to be the policy of the City of San Leandro, in the exercise of its police power, to protect the peace, health, safety and general welfare of the citizens of San Leandro from excessive, unnecessary and unreasonable noises from any and all sources in the community. It is the intention of the City Council to control the adverse effect of such noise sources on the citizens by prescribing standards prohibiting detrimental levels of noise and by providing a remedy for violations. The provisions of this Article and the remedies contained in this Code shall be cumulative and are not intended to replace any otherwise available remedies for public or private nuisances, nor any other civil or criminal remedies otherwise available. In addition, the regulations contained herein are not intended to substitute for any noise analysis conducted as a part of the City’s environmental review process for discretionary permit approvals, nor is it intended to limit more strict noise control requirements for discretionary permit approvals should more strict measures be found to be necessary in order to maintain noise levels that are not detrimental to the health and welfare of the citizens of the City.

Among the unacceptable noise sources identified in the City’s General Plan are mobile sources such as airplanes, commuter and freight railroads, and highway traffic and other sources which are regulated exclusively by the Federal or the State Government. While in most instances the City may not intervene to address these problems directly, it is the strong policy of the City to work with responsible government agencies and elected officials to reduce the real and damaging effects of these noise-producing activities on the quality of life of the City’s residents.

4-1-1110 GENERAL PROHIBITION

It is unlawful for any Person, as defined in Section 1-14-100(h) of this Code, to make, continue, or cause to be made or continued any disturbing, excessive or offensive noise which causes discomfort or annoyance to reasonable persons of normal sensitivity. The factors which should be considered in determining whether a violation of this section exists include the following:

1. The sound level of the objectionable noise.
2. The sound level of the ambient noise.
3. The proximity of the noise to residential property.
4. The zoning of the area.
5. The population density of the area.
6. The time of day or night.
7. The duration of the noise.
8. Whether the noise is recurrent, intermittent, or constant.
9. Whether the noise is produced by an industrial, commercial or noncommercial activity.
10. Whether the nature of the noise is usual or unusual.

4-1-1115 PROHIBITED ACTS

It is the intent of this Article to prohibit all disturbing, excessive and offensive noises except those specifically exempted by Section 4-1-1120 and those permitted under an exception permit issued pursuant to 4-1-1125. Notwithstanding any other provisions of this Article, the following acts, which are not in any way exclusive, are declared to be disturbing, excessive and offensive noises in violation of Section 4-1-1110:

(a) **Noises by Animals.** The permitting, by any person having charge, care, custody, or control of any animal, of such animal to emit any noise which is disturbing, excessive or offensive. For the purposes of this subsection, the animal noise shall not be deemed a disturbance if a person is trespassing or threatening to trespass upon private property in or upon which the animal is situated or if the noise is for any other legitimate cause, such as someone teasing or provoking the animal. The scope of this subsection is intended to be and shall be interpreted to be broader than any similar prohibition set forth in Section 4-11-435 of this Title.

(b) **Construction-related Noise Near Residential Uses.** Construction work or related activity which is adjacent to or across a street or right of way from a residential use, except between the hours of 7 a.m. and 7 p.m. on weekdays, or between 8 a.m. and 7 p.m. on Sunday and Saturday. No such construction is permitted on Federal holidays. As used in this Article, "construction" shall mean any site preparation, assembly, erection, substantial repair, alteration, demolition or similar action, for or on any private property, public or private right-of-way, streets, structures, utilities, facilities, or other similar property. Construction activities carried on in violation of this Article may be enforced as provided in Section 4-11-1130, and may also be enforced by issuance of a

stop work order and/or revocation of any or all permits issued for such construction activity.

(c) **Conflicts with Residential Uses.** Subject to the restrictions on constructions contained in subdivision (b), the sustained operation or use between the hours of 9 p.m. and 8 a.m. of any electric or gasoline powered motor or engine or the repair, modification, reconstruction, testing or operation of any automobile, motorcycle, sweeper, vacuum, public address system, whistle muffler, motorized scooter, machine or mechanical device or other contrivance or facility unless such motor, engine, automobile, motorcycle, sweeper, vacuum, public address system, whistle muffler, motorized scooter, machine or mechanical device is enclosed within a sound insulated structure so as to prevent noise and sound from being plainly audible from any residential property line.

(d) **Loud Music in Parks.** The use of electronic equipment, including but not limited to amplifiers, radio loudspeakers, phonographs, tape amplifiers, electronically operated or acoustic musical instruments or other device of like design used for producing sound in or upon any public street, park or grounds, or any other open area to which the public has access, whether publicly or privately owned, between the hours of 10 p.m. and 9 a.m. is unlawful. At any other time of day, such equipment may not be used in a manner which disturbs the peace, quiet and comfort of neighboring residents or persons of normal sensitivity who are using such areas. This subsection shall not apply to events for which a permit has been obtained pursuant to Chapter 4-20.

(e) **Music, Stereos and Electronics.**

(1) Operating, playing or permitting the operation or playing of any radio, television set, audio equipment, drum, musical instrument, or similar device which produces or reproduces sound at any time of day in such a manner as to disturb the peace, quiet and comfort of neighboring residents or persons of normal sensitivity. The operation of any such instrument, audio equipment, television set, machine or similar device between the hours of 10 p.m. and 8 a.m. in such manner as to be plainly audible at a distance of 50 feet from the building, structure or vehicle in which it is located, shall be prima facie evidence of a violation of this subsection.

(2) The conducting of or carrying on of band or orchestral concerts, rehearsals or practice between the hours of 10 p.m. and 8 a.m. sufficiently loud as to disturb the peace, quiet or repose of persons of ordinary and normal sensitivity who reside in the immediate vicinity of such band or orchestral concerts or rehearsals or practice.

(3) Using, or operating, or permitting to be used or operated, for any purpose, any loud speaker, loudspeaker system, public address or similar device between the hours of 10 p.m. and 8 a.m. in such a manner as to disturb the peace, quiet and comfort of neighboring residents or persons of normal sensitivity, except for any non-commercial public speaking, public assembly or other activity for which a permit has been issued pursuant Chapter 4-20 of this Title.

4-1-1120 EXEMPTIONS

The following activities shall be exempt from the provisions of this title:

(a) **Emergency Work.** The provisions of this title shall not apply to the emission of sound for the purpose of alerting persons to the existence of an emergency or in the performance of emergency work, and activities involving the execution of the duties of duly authorized governmental personnel and others providing emergency response to the general public, including but not limited to sworn peace officers, emergency personnel, utility personnel, and the operation of emergency response vehicles and equipment.

(b) **Entertainment Events.** The provisions of this Article shall not apply to those reasonable sounds emanating from authorized school bands, school athletic and school entertainment events and occasional public and private outdoor or indoor gatherings, public dances, shows, bands, sporting and entertainment events conducted between the hours of 7 a.m. and 10 p.m., and special events for which a permit has been issued pursuant to Chapter 4-20 of this Title.

(c) **Federal or State Preempted Activities.** The provisions of this Article shall not apply to any other activity the noise level of which is regulated by state or federal law.

(d) **Maintenance to Residential Property.** The provisions of this Article shall not apply to noise sources associated with maintenance to property used for residential purposes, provided the activities take place between the hours of 8 a.m. and 10 p.m.

(e) **Public Health, Welfare and Safety Activities.** The provisions of this Article shall not apply to construction maintenance and repair operations conducted by public agencies, franchisees of the City and/or utility companies or their contractors which are deemed necessary to serve the best interests of the public and to protect the public health, welfare and safety, including but not limited to, trash collection, street sweeping, tree removal, debris and limb removal, removal of downed wires, restoring electrical service, repairing traffic signals, unplugging sewers, vacuuming catch basins, repairing of damaged poles, removal of abandoned vehicles, repairing of water hydrants and mains, gas lines, oil lines, sewers, storm drains, roads, sidewalks, etc.

4-1-1125 EXCEPTIONS

If an applicant can show to the City Manager or his/her designee that a diligent investigation of available noise abatement techniques indicates that immediate compliance with the requirements of this Article would be impractical or unreasonable, a permit to allow exception from the provisions contained in all or a portion of this chapter may be issued, with appropriate conditions to minimize the public detriment caused by such exceptions. Any such permit shall be of as short duration as possible up to six months, but renewable upon a showing of good cause, and shall be conditioned by a

schedule for compliance and details of methods therefore in appropriate cases. Any person aggrieved with the decision of the City Manager or his/her designee may appeal to the City Council pursuant to Chapter 1-9 of this Code.

4-1-1130 ENFORCEMENT

Any violations of the provisions of this Article are expressly deemed and declared to be a public nuisance, and such violation shall be abated in the manner provided in Chapter 1-12 of this Code.

SECTION 3. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of the Ordinance is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part hereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause and phrase of the Ordinance irrespective of the fact that one or more of them would be declared unconstitutional or invalid. To this end, the provisions of the Ordinance are declared to be severable.

SECTION 4. Effective Date and Publication.

This ordinance shall take effect thirty (30) days after adoption and the title thereof shall be published once prior to adoption.