



CONSENT CALENDAR
November 12, 2002

To: Members of the City Council

From: Shirley Dean, Mayor

Subject: Enforcing Ordinances Regulating Noise Against Competition Automobile Audio Equipment

RECOMMENDATION:

That Council request the City Manager to evaluate possible strategies to protect the public from constant intermittent exposure to low frequency sounds emitted by automobile after-market base amplifiers; to refer this issue to the appropriate commissions (Health Commission, Community Environmental Advisory Commission, and others); and if appropriate, to request the City Attorney to make recommendations to increase the effectiveness of current ordinances; and to report back to City Council in four months on progress

BACKGROUND:

This issue was first brought to the attention of our office by a resident with petitions signed by more than 200 residents, who are asking the City to support their right to reasonable peace and quiet, which is being increasingly compromised by the widespread use of base-enhanced automobile audio equipment.

In addition to widespread concern by residents that they are being increasingly disturbed by unwelcome base sounds even when they are inside their own homes, there is a growing body of evidence that repeated exposure to low frequency noise produces significant systemic health implications.

The City Manager's memo of August 12, 2002, with information about applicable regulations regarding excessive audio systems in vehicles, suggested that any new ordinance created in Berkeley should "serve to supplement, rather than preempt, existing relevant law" and that it should include an educational rather than solely punitive element.

The city might want to consider producing an informational brochure addressing health and safety consequences and social impacts of base amplitude enhancement. A warning and brochure might be an appropriate response for first offenders. Subsequent citations could be incrementally severe, perhaps including fines for repeat offenses. The informational brochures could be designed for distribution at



multiple venues in the community, particularly at locations where youth congregate. Some cities have ordinances providing for the towing and impounding of vehicles.

Since traditional decibel measuring devices do not measure low frequency wave lengths, the City may want to consider acquisition of appropriate measurement devices to ensure fairness during enforcement action.

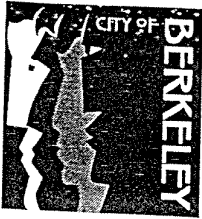
FINANCIAL IMPLICATIONS:

Unknown

CONTACT PERSON:

Mayor Shirley Dean 510-981-7100

Tamlyn Schafer Bright, Executive Assistant 510-981-7100



Office of the City Manager


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OFFICE OF MAYOR

August 12, 2002

To: Honorable Mayor and
Members of the City Council

From:  Weldon Kucker, City Manager

Subject: **EXCESSIVE AUDIO SYSTEMS IN VEHICLES/APPLICABLE REGULATIONS**

This memorandum is provided to update you on a request for information about reported public nuisances and applicable regulations regarding excessive vehicle audio systems. The request was made subsequent to a May 14, 2002 Council action item, a petition submitted by Ronald Rugato to "support entitlement to safer drivers and reasonable peace and quiet in Berkeley."

The Police Department reviewed noise-related calls for service made in January 2002 and found 35 complaints reporting 'boom car' noise. The incidents occurred throughout the City and reported as general noise complaints. Considering that noise-based nuisance activity goes unreported due to its brief duration and transience, there are likely more incidents occurring; the reported number suggests the noise caused by loud and/or reverberant car stereos is a disruptive element in the community.

Existing regulations governing this activity are found in the Municipal Code, Penal Code, and Vehicle Code. The City's Noise Ordinance (Title 13.40) and Penal Code (Section 415(2)) prohibit disruptive noise, though are impractical as primary enforcement tools. The Municipal Code's enforcement procedures are complex and designate the "Noise Control Officer", an employee currently with the Zoning Department, as the authorized City enforcement official. The Penal Code, which prohibits "malicious and willful... loud and unreasonable noise" requires specific intent, the noise to have excessive volume (bass vibration may be disruptive, but not arguably "loud"), and a citizen to identify a specific individual as responsible for the noise.

Most available for enforcement is Vehicle Code Section 27007 which, in part, states: "No driver of a vehicle shall operate, or permit the operation of, any sound amplification system which can be heard outside the vehicle from 50 or more feet when the vehicle is being operated upon a highway..." While a timely enforcement stop will identify the responsible driver, the offending vehicle's mobility is the key obstacle to effective enforcement. This statute is not available in circumstances involving parked cars.

Implementation of local ordinances designed to abate "plainly audible" sound and vibration has been an option explored by many municipalities around the nation. Any ordinance for our community should

serve to supplement, rather than preempt, existing relevant law, and would require legal analysis by the City Attorney.

The Police Department has made significant efforts to use available laws and opportunities for personal contact to respond to this nuisance problem. When possible, officers have initiated contacts with vehicle owners and those associated with offending cars to discuss the impact amplified stereo sound has on the neighborhood. This education-based enforcement has mitigated many problems before they began. Additionally, supervisors and officers have been directed to increase their formal enforcement activity in identified problem areas. Citations issued are being tracked to ensure continued attention to this program.

Please let me know if you have further questions.

cc: Ann-Marie Hogan, City Auditor
Sherry Kelly, City Clerk
Manuela Albuquerque, City Attorney
Roy L. Meisner, Acting Chief of Police