





Office of the City Manager

ACTION CALENDAR
September 16, 2008

To:  Honorable Mayor and Members of the City Council
From:  Phil Kamlarz, City Manager
Submitted by: Fred Medrano, Director of Health and Human Services
Subject: Amendments to Community Noise Ordinance, BMC Chapter 13.40

RECOMMENDATION

Adopt the first reading of an Ordinance amending provisions of the Community Noise Ordinance (BMC Chapter 13.40) that regulate permits for amplified sound.

FISCAL IMPACTS OF RECOMMENDATION

Possible increase in request for service, increase in permit review process and increase in enforcement cost.

CURRENT SITUATION AND ITS EFFECTS

The Community Noise Ordinance requires any person who wishes to have amplified sound at an event to obtain a permit from the Noise Control Officer (NCO). This ordinance has not been amended since 1982, and needs to be updated to clarify the standards used in evaluating permit applications and resolve procedural conflicts with other ordinances that have been subsequently adopted.

BACKGROUND

The Community Noise Ordinance (BMC Chapter 13.40) regulates, among other things, the use of amplified sound at events, such as speeches or music. Since it was adopted in 1982, staff and the community have identified a number of problems with this aspect of the ordinance.

Application process. Section 13.40.100 requires the NCO to publicize the availability of permits during the first six weeks of the year, suggesting that permit applications for the entire year may and should be submitted during that period. Early submittals can cause conflicts with street events that are requested later in the year. The proposed amendments would require that applications for sound permits be submitted no more than 2 months before to the date of the proposed event. Staff believes this will reduce the number of conflicts caused by the current system.

Preventing over use of specific locations. Staff and the community have also noted that certain prime, or perhaps just favored, sidewalk locations for events are used very frequently, to the extent that they become the informal "property" of permittees rather

than the public. Moreover, this imposes an unfair burden on residents and businesses near those locations. The proposed amendments would address this problem by limiting the number of events at any location on public property to nine per year (similar to limitations on the repeated use of private property for events involving amplified sound).

Improving criteria for permit decisions. The Community Noise Ordinance currently directs the NCO to consider various “factors” in deciding whether or not to issue a sound permit, and in the imposition of conditions on permits. The proposed amendment would authorize the NCO to promulgate more specific and objective standards for doing so. This will provide applicants, the community and staff more certainty with respect to when permits for amplified sound will be approved or denied, and what conditions may be imposed.

In addition, the proposed amendments would provide that non-compliance with the ordinance, even if not arising to formal “violations” for which permittees may be cited, can be considered in determining whether or not to issue a subsequent permit, or what conditions should be imposed on it.

Appeals. Finally, the Community Noise Ordinance provides for appeals of all decisions involving variances and permits to the “Community Health Advisory Committee”, and then the Council. However, the Community Health Advisory Committee has not existed for many years; and the Council agenda process is too lengthy to provide a timely appeal in many cases, e.g. where an event is planned to occur shortly after a permit application is submitted. The proposed amendment would allow the City Manager to hear and render timely decisions for appeals.

Other Revisions: In addition, the proposed revisions address other aspects of the ordinance that have been identified as impeding its enforcement. The proposed revisions:

- More clearly define what constitutes a “noise disturbance” (*i.e.*, disturbances that do not consist solely of exceeding decibel levels);
- Delete provisions that lower the decibel standard for certain types of noises, because they are no longer useful given prevailing ambient noise levels, too subjective, and difficult to enforce;
- Eliminate the requirements for a written warning as a condition of enforcement and a 15-minute grace period after a warning, because this prevents effective enforcement;
- Consolidate procedural provisions relating to enforcement and clarify enforcement procedures;
- Update notice procedures for noise variances; and
- Provide authority to establish fees for permits and variances, as well as fee waivers for indigent applicants.

RATIONALE FOR RECOMMENDATION

See preceding discussion. These amendments will provide additional certainty for all concerned, avoid scheduling conflicts, limit over use of any given location, and eliminate obsolete language.

ALTERNATIVE ACTIONS CONSIDERED

Take no action.

CONTACT PERSON

Manuel M. Ramirez, Environmental Health Manager, 981-5261

Attachment

1: Ordinance Amending BMC Chapter 13.40

ORDINANCE NO. –N.S.

ADDING SECTIONS 13.40.025 AND 13.40.130, AMENDING SECTIONS 13.40.020, 13.44.030, 13.40.050, 13.40.060, 13.40.070, 13.40.090, 13.40.100, AND 13.40.120, AND REPEALING SECTION 13.40.040 OF THE BERKELEY MUNICIPAL CODE, REGULATING COMMUNITY NOISE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That subdivisions J-1 and N-1 are added to Berkeley Municipal Code Section 13.40.020 as follows:

J-1. “Event” means a program, performance, or speech intended to draw spectators.

N-1. “Location” means the specific site such as a physical address, parcel number or geographic reference as described in the permit application as approved. For purposes of determining whether an application may be granted under Section 13.40.100.C, the “location” of an already-permitted event shall include the surrounding or adjacent area as set forth in this subdivision.

a. When the specific site is located in the middle of a block, its location includes both sides of the street and adjoining sidewalk(s) on the same linear block as that site. A block ends where a perpendicular street passes completely across the street where the specific site is located.

b. When a specific site is located at the intersection of two or more streets, its location includes both sides of all of the linear blocks and adjoining sidewalk(s) that end at that intersection.

c. When a specific site is located in a park, its location includes the entire park, unless the permit specifies a more limited area.

d. When a specific site is located on private property, its location includes the entire parcel, unless the permit specifies a more limited area.

Section 2. That subdivision R of Section 13.40.020 of the Berkeley Municipal Code is amended to read as follows:

R. “Noise disturbance” means any sound which violates ~~the factors and quantitative standards of~~ Sections 13.40.030 or 13.40.050 or 13.40.060.

Section 3. That Section 13.40.025 of the Berkeley Municipal Code is added to the Berkeley Municipal Code as follows:

Section 13.40.025 Noise Measurement procedures and enforcement.

A. Upon receipt of a complaint, the NCO or his or her agent, or other person trained to take sound readings, will investigate the complaint, except as otherwise specified. An investigation shall include gathering of data to adequately define the noise problem,

including (a) the type of noise source; (b) location of noise source relative to complainant's property, (c) the time period during which noise source is considered by the complainant to be intrusive, (d) the total duration of noise produced by noise source, and (e) the date and time. The investigation shall also include a sound level measurement, except where otherwise stated in this Chapter, which shall utilize the "A" weighting scale of sound level meter and the "slow" meter response, and which measures the sound level on the complainant's property.

B. If it is determined the sound level violates the provisions of this Chapter, the following procedures shall be followed, unless otherwise stated in this Chapter:

1. A warning shall be issued to the person responsible for the disturbance.

2. If the disturbance persists following the notice, or recurs within an eight-hour period, then the person responsible for the disturbance shall be guilty of a violation of this Chapter.

C. Any violation of this Chapter is either a misdemeanor or an infraction as set forth in Chapter 1.20. In addition to any other available remedies, the violation of any of the provisions of this Chapter is declared to be a public nuisance and may be abated as provided in Sections 11.40.010 through 11.44.030 of the Berkeley Municipal Code.

Section 4. That Section 13.40.030 of the Berkeley Municipal Code is amended to read as follows:

Section 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 continue, 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 non-amplified 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. The violation of any of the provisions of this chapter is declared to be a public nuisance and may 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 in excess of the levels prescribed by this chapter exists, the following procedures shall be followed:~~

~~—1. A written warning shall be issued by the noise control office(r) or his agent to the person responsible for the event causing the disturbance.~~

~~—2. If the disturbance persists for more than fifteen minutes following the notice, or recurs within an eight-hour period, then the person responsible for the event causing the disturbance shall be guilty of a violation of this chapter. Any such violation shall be an infraction.~~

~~BD.~~ 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 or musical content.

Section 5. That Section 13.40.040 of the Berkeley Municipal Code is repealed:
as follows:

~~Section 13.40.040 Noise measurement procedure.~~

~~Upon receipt of a complaint from a citizen, the noise control office(r) or his agent, equipped with a sound level meter, shall investigate the complaint. 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, the noise control office(r) or his agent shall measure the sound level at any point on the receiver's property.~~

Section 6. That Section 13.40.050 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.050 Exterior noise standards.

A. Maximum permissible sound levels by receiving lands use zoning district.

1. The noise standards for the various categories of land use identified by the NCO noise control office(r) as presented in Table 13.40-1 or 13.40-2 shall, unless otherwise specifically indicated, 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, ~~either incorporated or unincorporated~~, to exceed:

a. The noise standard for that land use as specified in Table 13.40-1 for a cumulative period of more than thirty minutes in any hour; or

b. The noise standard plus five dB for a cumulative period of more than fifteen minutes in any hour; or

c. The noise standard plus ten dB for a cumulative period of more than five minutes in any hour; or

d. The noise standard plus fifteen dB for a cumulative period of more than one minute in any hour; or

e. The noise standard plus twenty dB or the maximum measured ambient level, for any period of time.

3. If the measured ambient noise level differs from that permissible within any of the first four noise limit categories above, the allowable noise exposure standard shall be the ambient noise level.

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 Section 13.40.050A.2. 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. Correction for character of sound. In the event the alleged offensive noise, as judged by the noise control office(r) or his agent, contains a steady, pure tone such as a whine, screech, or hum, or is an impulsive sound such as hammering or riveting, or contains music or speech, the standard limits set forth in Table 13.40-1 shall be reduced by five dB.~~

[No change to remainder of Section.]

Section 7. That Section 13.40.060 of the Berkeley Municipal Code is amended to read as follows:

13.44.060 Interior noise standards.

A. 1. The interior noise standards for multi-family residential dwellings as presented in Table 13.40-2 shall apply, unless otherwise specifically indicated, within all such dwellings with windows in their normal seasonal configuration.

[Table 13.40-2 is unchanged.]

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 receiving dwelling unit to exceed:

a. The noise standard as specified in Table 13.40-2 for a cumulative period of more than five minutes in any hour; or

b. The noise standard plus five dB for a cumulative period of more than one minute in any hour; or

c. The noise standard plus ten dB or the maximum measured ambient, for any period of time.

3. If the measured ambient noise level differs from that permissible within any of the noise limit categories above, the allowable noise exposure standard shall be the ambient noise level.

~~B. Correction for character of sound. In the event the alleged offensive noise, as judged by the noise control office(r) or his agent, contains a steady, pure tone such as a whine, screech, or hum, or is an impulsive sound such as hammering or riveting, or~~

~~contains music or speech the standard limits set forth in Table 13.40-2 shall be reduced by five dB.~~

Section 8. That Section 13.40.070 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.070 Prohibited acts.

A. Noise disturbances prohibited. No person shall unnecessarily make, continue, or cause to be made or continued, any noise disturbance.

B. Specific prohibitions. The following acts, and the causing or permitting thereof, are declared to be in violation of this ~~Chapter, if the measurement and warning procedures in Section 13.40.025 have been conducted:~~

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 create a noise disturbance, ~~or at any time to violate the provisions of Sections 13.40.050 or 13.40.060, except for sound levels activities~~ for which a variance ~~or permit~~ has been issued by the NCO.

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 creates a noise disturbance or ~~at any time violates the provisions of Sections 13.40.050 or 13.40.060, except for sound levels any activity~~ for which a variance or permit has been issued by the NCO.

~~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 NCO. The provisions of this section shall not be construed to prohibit the selling by outcry of merchandise, food, beverages at licensed sporting events, parades, fairs, circuses, or other similar licensed public entertainment events.~~

~~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, the 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 ten minutes or intermittently for thirty minutes shall be prima facie evidence of such annoyance or discomfort. Factors which can be used to evaluate excessive animal noise include, but are limited to, (a) pitch; (b) pattern; (c) and (d) frequency of occurrence.~~

~~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. in such a manner as to cause a noise disturbance across a~~

~~residential real property line or at any time to violate the provisions of Sections 13.40.050 or 13.40.060.~~

~~73. Construction/demolition.~~

~~a. Operating or causing the operation of any tools or equipment used in construction, drilling, repair, alteration, or demolition work between weekday hours of seven p.m. and seven a.m., or eight p.m. and nine a.m. on weekends or holidays such that the sound therefrom creates a noise disturbance across a residential or commercial real property line or violates Sections 13.40.050 or 13.40.060, except for emergency work of public service utilities or by variance issued by the NCO. (This section shall not apply to the use of domestic power tools as specified in Section 13.40.070, subsection B.511.)~~

~~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 shall 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 ten days) of mobile equipment:

[Table 13.40-3 is unchanged.]

Stationary Equipment. Maximum sound levels for repetitively scheduled and relatively long term operation (period of ten days or more) of stationary equipment:

[Table 13.40-4 is unchanged.]

~~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 one hundred fifty feet (forty-six meters) from the source if on a public space or public right-of-way.~~

~~94. Powered model vehicles. Operating or permitting the operation of powered model vehicles so as to create a noise disturbance across a residential or commercial real property line or at any time to violate 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 subparagraph b. below.~~

~~b. (i) Testing of a stationary emergency signaling device shall not occur before seven a.m. or after seven p.m. Any such testing shall use only the minimum cycle test time. In no case shall such test time exceed sixty 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 seven a.m. or after ten p.m. The time limit specified in subparagraph b. (i) 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 fifteen minutes of any single security violation or false alarm.~~

~~544. 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 between ten p.m. and seven a.m. on weekdays (or eight p.m. and nine a.m. on weekends and legal holidays), so as to create a noise disturbance across a residential or commercial real property line or violate Sections 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 Sections 13.40.050 or 13.40.060.

~~642. 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 ninety-five 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.~~

~~C. Additional specific prohibitions.~~

~~The following acts, and the causing or permitting thereof, are declared to be in violation of this Chapter, whether or not the measurement and warning procedures in Section 13.40.025 have been conducted:~~

~~1. Yelling, shouting. Loud or raucous yelling, shouting, whistling or singing so as to cause a noise disturbance;~~

~~2. 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 as authorized by variance issued by the NCO. The provisions of this section shall not be construed to prohibit the selling by outcry of merchandise, food, beverages at licensed sporting events, parades, fairs, circuses, or other similar licensed public entertainment events.~~

~~3. Animals. Keeping or maintaining, or permitting to be kept or maintained 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, the 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 effects only one individual. Any noise which is audible continuously for ten minutes or intermittently for thirty minutes shall be prima facie evidence of such annoyance or discomfort. Factors which can be used to evaluate excessive animal noise include, but are limited to, (a) pitch; (b) pattern; and (c) frequency of occurrence. This subdivision may be enforced by an Animal Control Officer.

4. 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 one hundred fifty feet (forty-six meters) from the source, if on a public space or public right-of-way.

5. 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 or as mandated by state or federal law, as provided in subparagraph b. below.

b. (i) Testing of a stationary emergency signaling device shall not occur before seven a.m. or after seven p.m. Any such testing shall use only the minimum cycle test time. In no case shall such test time exceed sixty 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 seven a.m. or after ten p.m. The time limit specified in subparagraph b. (i) shall not apply to such complete system testing.

c. Sounding or permitting the sounding of any exterior building burglar or fire alarm, unless such alarm is terminated within fifteen minutes of any single security violation or false alarm. Car alarms will be enforced under Vehicle Code section 22651.5 or other applicable Vehicle Code section.

6. 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.

7. Notwithstanding Subsection B.6 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. Notice of this prohibition shall be posted in all stores selling such gasoline powered machines within the City limits.

8. 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. in such a manner as to cause a noise disturbance across a residential real property line or violates Sections 13.40.050 or 13.40.060.

Section 9. That Section 13.40.090 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.090 Issuance of variances by the NCO.

The creation of any noise which exceeds the standards specified in this ~~e~~Cchapter requires the issuance of a variance or permit. The NCO shall evaluate all applications for permits or 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 he or she may deem reasonable to achieving compliance with the provisions of this ~~e~~Cchapter. 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 NCO the time for compliance cannot be reasonably determined, a permit 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 permit or variance, ~~the said~~ NCO 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 zone 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 nominal fee shall be charged to each applicant for processing permits or variances. Fee schedules shall be approved by council resolution. A report of permits and variances shall be prepared monthly and be available for public review.~~

A. Any person seeking a variance pursuant to this section shall file an application with the NCO. 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. ~~published according to Berkeley Ordinance No. 3018 N.S~~ Any ~~If an~~ individual who claims to be adversely affected by allowance of the variance ~~may file~~s a written statement no later than 5 working days before the scheduled variance with the NCO objecting to the proposed variance, the NCO will facilitate discussion with the applicant to mitigate that individual's concerns. ~~containing any information to support his claim. If at any time the NCO finds that a sufficient controversy exists regarding an application, a public hearing will be held.~~

B. In determining whether to grant or deny the application, the NCO 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 NCO may reasonably require. In granting or denying an application, the NCO

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 ~~e~~Chapter. (Ord. 5500-NS § 1 (part), 1982)

Section 10. That Section 13.40.100 of the Berkeley Municipal Code is amended to read as follows:

Section 13.40.100- Permits--Outdoor amplified sound.

~~A. Applications. The permit process is intended to acquaint applicants with the provisions of this chapter.~~ Any person(s) or organization(s) wishing to ~~stage a one-time event employing the use of~~ amplified sound outdoors ~~for an event must obtain a~~ shall apply to the NCO for a one-time permit for the amplified sound from the NCO at event. The NCO shall publicize the availability of permits for any one location for at least six weeks commencing January 1 of each year.

1. An application pursuant to this Section must be submitted to the NCO not more than 60, but not 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.

2. 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, including two people who will be in attendance at all times and have the authority to deal with the NCO or the police in response to complaints and/or violations, unless only one person will be running the event.

The NCO, in evaluating the application, shall consider the following factors:

~~AB. Factors~~ Criteria for evaluation of applications. In evaluating an application, the NCO, shall consider the factors/criteria set forth in this subdivision. In addition, the NCO may adopt standards to implement such criteria.

1. Time ~~and duration~~ direction (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. Compliance with provisions of other City agencies.

910. Past non-compliance with the provisions of this ~~chapter~~ Chapter and previous permits granted to the organization, even if such non-compliance is corrected after oral or written warnings.

~~1011. 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 thirty days of the requested date.~~

~~1112. That on public property no more than one permit be issued for the location in any one day and no more than nine permits be granted for the location within that calendar year, except for designated City parks or at special events. This application will be due in the NCO no less than thirty days before the intended date of the event.~~

BC. Mandatory denial of certain applications.

1. An application for a permit for amplified sound shall be denied if:

a. A permit for amplified sound has already been issued for that location for the same day; or

b. The information contained in the application, including supplemental information, if any, is found to be false in any material respect, the event would be contrary to law, and/or the applicant has failed to meet the City requirements for a permit.

2. An application for a permit to operate a sound amplifier on private property shall be denied if there have been more than seven permits for outdoor or indoor amplified sound granted for the location within that calendar year or a permitted event has taken place at the location within 30 days of the requested date.

3. An application for a permit to operate a sound amplifier on public property shall be denied if there have been more than nine permits for the location within that calendar year, provided that this limitation does not apply to events permitted under Chapters 6.46 and 13.44.

D. Contents of Permits and Conditions.

An amplified sound permit shall contain the information given in the application and shall impose reasonable time, place and manner conditions such that the proposed event 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. The conditions imposed shall be in conformity with the requirements of this Chapter and shall provide only for such modification of the application's proposed event as is necessary to achieve compliance with this Chapter. The permittee shall carry the permit during the proposed event and show it, upon demand, to any City employee authorized to enforce this Chapter.

1. Additionally, aAll permits events for which a one-time permit is granted shall will be subject to the following restrictions and conditions:

a. Sound amplifying equipment must be easily moved and be self-supporting, and may not be attached, tied or locked to trees, hydrants, electroliers or other permanent structures or benches.

b. All equipment must be kept in locations that comply with the location and size requirements of Section 14.48.170.

1c. The only amplified sounds permitted shall be either music or human speech, or both.

2d. Sound amplification equipment shall not be utilized in any location for a period in excess of four hours in any twenty-four hour period.

3e. Sound amplifying equipment shall be used upon public property only between the hours of ten a.m. and eight 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 ten a.m. and ten p.m.

4f. Speakers for sound amplification equipment shall be directed, to the extent feasible, toward open or unoccupied space and away from residentially occupied property.

5g. On private property, ~~The~~ sound emanating from sound amplifying equipment ~~on private property~~ shall not exceed fifteen dBA above the ambient noise level measured at the exterior of any dwelling unit located on any other residential property, and in no case to exceed sixty-five dBA at the exterior of any such building. On public property such sound may not exceed ten dBA above ambience at any point fifty feet from the sound amplifying equipment. The NCO may allow higher limits upon a showing that an expected audience cannot be effectively communicated to within the above limits.

6h. 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. The NCO has the authority to impose order noise limits up to 5 dBA below the exterior noise limits established by Section 13.40.050 in response to conditions or other detriments caused by the activity for which the permit was issued.

7i. ~~Approval of a permit may be conditioned upon s~~Such other terms as may be necessary to insure compliance with the provisions ~~and spirit~~ of this ~~chapter~~Chapter.

~~8. The organization must provide the NCO with the names of two people who will be in attendance at all times and have the authority to deal with the NCO or the police in response to complaints and/or violations.~~

2. The NCO 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.

3. —3.—The NCO may summarily terminate the permit if the activity for which the permit is issued results in violations of any applicable laws or regulations.

4. . A violation of any permit condition is a violation of this Ordinance.

e. E. The City Manager may issue additional regulations to further the purposes of this Section.

Section 11. That Section 13.40.120 of the Berkeley Municipal Code is amended to read as follows:

Section 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 NCO may appeal in writing to the City Manager no less than 24 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. Community Health Advisory Committee which shall be the appeals board for one year. At the end of that year the committee will review the appeals process and make recommendations to the City Council.

~~—In the case of a permit denial, the board shall meet as soon as feasibly practical in order to consider the matter. All other appeals shall be scheduled in the board's regular~~

~~course of business. The board may take action as set forth in Section 13.40.090 of this chapter, subject to appeal to the City Council.~~

Section 12. That Section 13.40.130 of the Berkeley Municipal Code is added to read as follows:

Section 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 apply for a permit because of an inability arising from such indigence to pay the application fee shall not be required to pay the fee. Applications for indigent status shall be made upon application for the permit and shall be 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 Sections 17000 *et seq.* of the Welfare and Institutions Code.

Section 13. Copies of this Bill shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.