



**CITY OF SALINAS
COUNCIL STAFF REPORT**

DATE: June 4, 2019

DEPARTMENT: OFFICE OF THE CITY ATTORNEY

FROM: CHRISTOPHER A. CALLIHAN, CITY ATTORNEY

TITLE: ORDINANCE PROHIBITING DISTURBING OR UNREASONABLY LOUD NOISES AND IMPOSING LIMITATIONS ON SOUND AMPLIFICATION

RECOMMENDATION MOTION:

A motion to adopt an ordinance updating the City’s noise control regulations and limitations on sound amplification.

RECOMMENDATION:

It is recommended that the City Council adopt the proposed ordinance.

EXECUTIVE SUMMARY:

This item was originally considered and introduced by the City Council on April 16, 2019; however, due to an absence the City Council was unable to unanimously adopt the then-proposed ordinance thereby necessitating a second reading. Following the April 16, 2019, City Council meeting, Council member Davis raised two additional issues for consideration: (1) whether the fines for violations of the ordinance could be increased and (2) whether a “social host” component could be incorporated to hold property owners or parents, for example, liable for the violations committed by their tenants or children, respectively. This proposed ordinance addresses both of those additional issues and incorporates revisions to the originally proposed ordinance. Consequently, this proposed ordinance will require either adoption by the unanimous approval of the City Council or an introduction and then adoption at a subsequent City Council meeting.

During the April 16, 2019, City Council meeting, the Council members raised a concern regarding the use of agricultural equipment and the time limits imposed on such operations in the originally proposed ordinance. At the request of the City Council the time restriction on agricultural operations [Section 5-09.03, subsection (c)] has been removed. This will allow unrestricted use of agricultural equipment regardless of the hour of day. Additionally, at the City Council’s request, the time periods applicable to noise regulations were made consistent: 7:00 A.M. and 10:00 P.M.

This proposed ordinance adds two articles to the Salinas Municipal Code regarding noise and sound amplification. This ordinance prohibits all noises which are disturbing or unreasonably loud. It strikes a balance between normal, everyday noises that are unavoidable in an urban environment and those noises that are so excessive and annoying to persons of ordinary sensitivity that they must be curtailed in order to protect the comfort and the tranquility of all persons who live and work in the city. If a noise exceeds the standards set in the ordinance, the violation constitutes a nuisance which will be subject to abatement. The ordinance also establishes regulations on sound-amplification and imposes on both (noise violations and sound amplification violations) penalties and costs incurred for multiple responses by the City to violations.

DISCUSSION:

Council members Barrera, De La Rosa, and Davis have regularly raised concerns regarding loud parties in neighborhoods within their districts. These parties sometimes include live music or amplified music which disturbs the peace and the quiet of the residents, thereby creating nuisances for those who reside in or around those neighborhoods. The current noise ordinance has been in effect for some time and does not provide clear guidance as to what noises are acceptable and what noises are not acceptable. This can be problematic for effective enforcement by the Salinas Police Department and the Code Enforcement Division.

The proposed ordinance does not measure noise on a decibel level basis, but rather on what is acceptable to a reasonable person of normal sensitivity. In doing so, “noise disturbances” are prohibited under the ordinance, meaning noises which (a) endanger or injure the safety or health of human beings or animals or (b) annoys or disturbs reasonable persons of normal sensitivities or (c) endangers or injures persons or real property or (d) violates specific provisions of the ordinance. Specific examples of acceptable and unacceptable noises are provided in the ordinance to provide guidance including noise levels for residential devices (e.g., yard equipment, televisions, and radios), animals, and power tools and other machinery. Generally, the ordinance prohibits certain excessive noise between the hours of 10:00 P.M. and 7:00 A.M.

Given the need sometimes for multiple responses to noise complaints, the ordinance incorporates penalties for those instances when City personnel response multiple times to the same location for the same or similar violation: in addition to penalties and sanctions otherwise imposed pursuant to the ordinance, the City may recover from the person violating the ordinance its costs incurred for multiple responses within a twelve-hour period for the same noise violation.

To address the two additional issues raised by Council member Davis, the ordinance sets the penalties at \$250 for the first violation, \$500, for the second violation, and \$1000 for the third violation, as defined in the ordinance. This would be in addition, for example, to costs and expenses incurred for multiple responses to the same location with a defined period of time for the same violation. The Council has discretion to impose higher fines for violations of this ordinance, however, the proposed fines are consistent with the fines imposed for similar violations. And, as

the Municipal Code is further updated, the fines for various violations of the Municipal Code can be brought into greater alignment. In response to the second additional issue (“social host” accountability”) the ordinance has a provision making clear that in addition to the person causing the violation, others may be held jointly and severally liable if they know or should have known of the noise disturbance. It will not be a defense to a violation of this ordinance for a person to assert that some other person causes the noise violation to occur.

The ordinance also includes restrictions on the use of sound amplification equipment and sound trucks.

CEQA CONSIDERATION:

The action of adopting the proposed ordinance is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Guidelines section 15061(b)(3). This exemption is allowed when the activity, in this case the recommendation of adoption of the ordinance, does not have the potential for causing a significant effect on the environment.

STRATEGIC PLAN INITIATIVE:

The City Council’s adoption of the proposed ordinance supports the City Council’s goals and objectives of improving the Quality of Life for all of its residents and promoting a Safe and Livable Community (2016-2019 Strategic Plan).

FISCAL AND SUSTAINABILITY IMPACT:

The City Council’s adoption of the proposed ordinance would not have an impact on the City’s General Fund, Measure E, or Measure G.

DEPARTMENTAL COORDINATION

Implementation and enforcement of the proposed ordinance will require coordination among several City departments including Community Development (Planning, Building, and Code Enforcement), Police Department, Fire Department, and City Attorney’s Office.

ATTACHMENTS:

Proposed Ordinance

ORDINANCE NO. _____ (N.C.S.)

**AN ORDINANCE PROHIBITING DISTURBING OR UNREASONABLY LOUD
NOISES AND IMPOSING LIMITATIONS ON SOUND AMPLIFICATION**

City Attorney Impartial Analysis

This Ordinance prohibit all noises which are disturbing or unreasonably loud and declares such noises to be nuisances subject to abatement. It strikes a balance between normal, everyday noises that are unavoidable in an urban environment and those noises that are so excessive and annoying to persons of ordinary sensitivity that they must be curtailed in order to protect the comfort and the tranquility of all persons who live and work in the city. To those ends, The Ordinance also proscribes regulations on sound-amplification and imposes on both penalties and costs incurred for multiple responses by the City to violations.

WHEREAS, noise is recognized by federal, state, and local governments as jeopardizing the public health and welfare if it is excessive; and

WHEREAS, local governmental entities may regulate excessive noise within their jurisdictions to protect the general welfare (California Constitution, Article XI, Sec. 7) as long as those regulations do not infringe on constitutional or preemptive rights; and

WHEREAS, ordinances that prohibit noise characterized as “loud, unnecessary, and unusual” or “which disturbs or tends to disturb the peace or good order” have been upheld as constitutional prohibitions; and

WHEREAS, in establishing noise regulations the United States Congress found that inadequately controlled noise presents a growing danger to the health and welfare of the nation’s population, particularly in urban areas (42 U.S.C. 4901); and

WHEREAS, in establishing the Noise Control Act, the California Legislature found and declared that (1) excessive noise is a serious hazard to the public health and welfare, (2) exposure to certain levels of noise can result in physiological, psychological, and economic damage, (3) there is a continuous and increasing bombardment of noise in the urban, suburban, and rural areas, and (4) all Californians are entitled to a peaceful and quiet environment without the intrusion of noise

which may be hazardous to their health or welfare (California Health and Safety Code Section 46000); and

WHEREAS, under the Noise Control Act individual cities are given the authority to set strict rules for noise reduction and to enforce them as necessary; and

WHEREAS, under California law, any person who maliciously or willfully disturbs another person by loud or unreasonable noise may be punished by up to ninety (90) days in jail, a fine up to \$400, or both (California Penal Code Section 415(2)); and

WHEREAS, the city of Salinas is a mostly-urbanized and developed community, with residential units in close proximity to one another and, in some areas, with commercial areas adjoining residential areas; and

WHEREAS, the Salinas City Council finds that this ordinance is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Guidelines section 15061(b)(3).

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF SALINAS as follows:

SECTION 1. Chapter 21A of the Salinas Municipal Code is hereby repealed in its entirety.

SECTION 2. Article IXA is hereby added to Chapter 5 of the Salinas Municipal Code and will read as follows:

Article IXA. Disturbing the Peace; Noise.

Sec. 5-09.01. Disturbing the peace prohibited; Purpose and Intent of Article.

It is the intent of this article to prohibit all noises which are disturbing or unreasonably loud. The purpose of this article is to strike a balance between normal, everyday noises that are unavoidable in an urban environment and those noises that are so excessive and annoying to persons of ordinary sensitivity that they must be curtailed in order to protect the comfort and the tranquility of all persons who live and work in the city. To those ends, no person shall disturb the peace, quiet, and comfort of any neighborhood by creating therein any disturbing or unreasonably loud noise.

Sec. 5-09.02. Prohibited Noises—General Standard.

Unless otherwise permitted in this article, it shall be unlawful for any person to willfully or negligently make or continue, or cause to be made or continued, or permit or allow to be made or continued any noise which disturbs the peace and quiet of any neighborhood or which causes any discomfort or annoyance to a reasonable person of normal sensitivity in the area.

“Noise disturbance,” for purposes of this article means any sound which (a) endangers or injures the safety or health of human beings or animals or (b) annoys or disturbs reasonable persons of normal sensitivities or (c) endangers or injures persons or real property or (d) violates the factors set forth in this section.

Except as may otherwise be specifically permitted in this Municipal Code, no permit shall be issued for any activity that may violate this section.

When considering whether a noise, sound, or vibration is unreasonable within the meaning of this section, the following factors shall be taken into consideration:

- (a) The volume and the intensity of the noise, particularly as it is experienced within a residence or a place of business;
- (b) Whether the noise is prolonged and continuous;
- (c) How the noise contrasts with the ambient noise level;
- (d) The proximity of the noise source to residential and to commercial uses;
- (e) The time of day;
- (f) The anticipated duration of the noise;
- (g) Whether the noise is natural or unnatural; and
- (h) Any other relevant circumstances or conditions.

Sec. 5-09.03. Prohibited Noises—Specific Examples.

Notwithstanding any other provision of this article, the following acts and the causing or the permitting thereof, are declared to be in violation of this article:

- (a) Residential devices: Yard supplies, radios, television sets, musical instruments, and similar devices. Operating, playing, or permitting the operation or the playing of devices necessary and commonly associated with residential living. Such noise includes, but is not limited to, noise created by power mowers, trimmers, home appliances (radios and televisions), musical

instruments, home workshops, vehicle repairs and testing, home construction projects, or similar devices or activities which produces or reproduces sound. Noise generated from residential devices between the hours of 10:00 P.M. and 7:00 A.M. in such a manner as to create a noise disturbance across a residential or a commercial property line or at any time to violate the provisions of this section.

(b) Speakers; Amplified sounds. Using or operating for any purpose any speaker, speaker system, or similar device between the hours of 10:00 P.M. and 7:00 A.M., such that the sound therefrom creates a noise disturbance across a residential property line, or at any time otherwise violates the provisions of this section, except for any noncommercial public speaking, public assembly, or other activity or activity for which a permit has been issued pursuant to the provisions of this Code.

(c) Animals. Owning or possessing any animal (including a bird) which frequently or for long duration, howls, barks, meows, squawks, or makes other sounds which create a noise disturbance across a residential or a commercial property line.

(d) Loading and Unloading. Loading, unloading, opening, closing, or other handling of boxes, crates, containers, building materials, or similar objects between the hours of 10:00 P.M. and 7:00 A.M. in such a manner as to cause a noise disturbance across a residential property line or at any time otherwise violate the provisions of this section.

(e) Emergency Signaling Devices. The intentional sounding or permitting the sounding outdoors of any fire, burglar, or similar emergency signaling device, except for emergency purposes or testing. Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle alarm, unless such alarm is terminated within thirty (30) minutes of activation.

(f) Domestic power tools, machinery. Operating or permitting the operation of any mechanically-powered saw, sander, drill, grinder, lawn or garden tool, or similar tool between the hours of 10:00 P.M. and 7:00 A.M. so as to create a noise disturbance across a residential or a commercial property line.

Sec. 5-09.03. Exemptions.

The following shall be exempt from the provisions of this article:

(a) Noise created by and emanating from equipment operated in the public interest or for emergency or safety purposes. Such equipment includes, but is not limited to, sirens, street sweepers, wood-chippers, garbage trucks, or public utility equipment.

(b) Testing of the complete emergency signaling system, including the functioning of the signaling device, between the hours of 7:00 A.M. and 10:00 P.M., not more than once during a calendar month. In no case shall such test exceed sixty (60) seconds.

(c) Agricultural operations. All mechanical devices or equipment associated with agricultural operations conducted on agricultural property.

(d) Federal or State Preempted Activities. Any other activity to the extent regulation thereof has been preempted by state or federal law.

Sec. 5-09.04. Enforcement; Penalties; Declaration of Nuisance; Joint and Several Responsibility.

(a) A violation of this article shall be a public nuisance and may be abated by the City Attorney.

(b) Any violation of the provisions of this article shall be an infraction or subject to administrative citation, at the discretion of the City Attorney. Each hour such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

(1) The first violation of this article shall be subject to a fine of \$250.00.

(2) The second violation of this article during a twelve-month period shall be subject to a fine of \$500.00.

(3) The third and subsequent violations of this article during a twelve-month period shall be subject to a fine of \$1,000.00

(4) Joint and Several Responsibility. In addition to the person causing the violation of this article, the owner, tenant, or lessee of property, or a manager or agent, or any other person lawfully entitled to possess the property from which the offending sound is emitted at the time the offending sound is emitted, shall be responsible for compliance with this article if the additional responsible party knows or should have known of the violating noise disturbance. It shall not be a lawful defense to assert that some other person caused the sound violation. The lawful possessor or operator of the premises shall be responsible for operating or maintaining the premises in compliance with this article and may be cited regardless of whether or not the person actually

causing the sound is also cited. Notwithstanding the foregoing, an owner, manager, or agent of property from which the violating sound is emitted and who does not reside on such property shall not be cited for violation of the provisions of this article unless such owner, manager, or agent has previously been informed in writing by a representative of the City of the existence of a violating noise disturbance on the property, and such disturbance continues or occurs again.

Sec. 5-09.05. Charging for Responses.

(a) In addition to any fines or penalties which may otherwise be levied by the city pursuant to this article, the city shall be entitled to recover from any person found to be in violation of any provision of this article (responsible party), the city's full response costs incurred for each subsequent response within the twelve hour period following the first response.

(b) For purposes of this article, the term "response costs" means those reasonable and necessary costs directly incurred by the city for a response under this article and will include the cost of providing police, fire, and/or other emergency response services to include, but not limited to:

- (1) Salaries and benefits of law enforcement and/or emergency personnel for the full amount of time spent responding to, remaining at, or otherwise dealing with such gatherings, and the administrative costs attributable to such responses;
- (2) The cost of any medical treatment to or for any law enforcement personnel and/or emergency personnel injured while responding to, remaining at, or leaving the scene of a violation of this article; and
- (3) The cost of repairing any city equipment or property damaged and the cost of the use of any such equipment used in responding to, remaining at, or leaving the scene of a violation of this article.

(c) The city's response costs will be deemed a debt owed to the city which may be recovered by the city in a civil action. In addition to any response costs which the city may recover, in the event the city brings a civil action to enforce the provisions of this section and to recover its response costs, the city may be entitled to recover its attorney fees and costs incurred in the action if the city prevails.

(d) The bill of charges will be served upon the responsible party(ies) within thirty days after the last response. The bill of charges must be paid within thirty days of the date of such bill.

(e) The total amount of the response charge will be deemed to be a civil debt to the City and the Finance Director and the City Attorney may take such action to recover the costs as the City is authorized to do by law for the recovery of a civil debt. If the City is obliged to initiate litigation or other proceedings authorized by this section to recover this debt, the responsible party(ies) will also be responsible for costs of suit, attorney fees, and costs of collection, in addition to the response costs.

(f) The bill of charges and any other notices required by this section will be served upon the responsible party(ies) in accordance with the service procedures established in this Code. If the responsible party(ies) has no last known business or residence address, then the scene of the disturbance will be deemed to be the proper address for service of notice.

(g) The bill of charges will include a notice of the right of the person being charged to request a determination by the City to dispute the imposition of a response charge or the amount of the charge. Any request for a determination to dispute the imposition of a response charge or the amount of the charge must be in writing and must be received by the City Clerk within ten days of the date of service of the bill of charges. The City Manager will designate an individual to hear and to rule upon such requests. The decision of the designated City official will be final.

SECTION 3. Article IXB is hereby added to Chapter 5 of the Salinas Municipal Code and will read as follows:

Article IXB. Sound Amplification.

Sec. 5-09.06. Restrictions on Use of Sound Amplifying Equipment and Sound Trucks.

(a) No person shall use or cause to be used any sound amplifying device or equipment at any place in the city, whether on public property or private property, except in accordance with subdivision (b) of this section.

(b) Sound amplifying equipment and sound trucks:

(1) Shall only be used to produce music or human speech, or both.

(2) Shall not be emitted near hospitals, churches, schools, courthouses, or City facilities in a manner that unreasonably disrupts, obstructs, impairs, or interferes with the normal use and operation of such facilities for their intended purposes.

(3) Shall be operated at a volume of sound that is not unreasonably loud, raucous, jarring, disturbing, or a nuisance to reasonable persons of normal sensitivities within the range of audibility, considering the factors set forth in section 5-09.02 of this Code.

(4) Shall be operated in a manner that directs sound, to the extent feasible, toward open unoccupied space and away from residential uses.

(5) Shall not be used between the hours of 10:00 P.M. and 7:00 A.M.

Sec. 5-09.07. Exceptions.

This article shall not be construed to apply to the use of sound amplifying equipment or devices under the following circumstances:

(a) Sound amplification equipment or devices used on privately owned property, whether indoors or outdoors, where the sound produced does not carry beyond the property line or does not unreasonably disturb any person outside the property where the sound is generated.

(b) Sound amplification equipment or devices used in conformity with a special event permit issued by the City.

(c) Radios, stereo systems, televisions, and other similar audio equipment, wherever used, when the volume does not exceed the volume of normal conversational speech.

(d) Sound amplification equipment or devices used on emergency vehicles or by government employees in connection with any activity undertaken for the protection of the public health or safety.

Sec. 5-09.08. Sound amplification from aircraft.

No person shall operate or permit to be operated any sound-amplification equipment from any aircraft in or over the city of Salinas for any purpose, except that law enforcement agencies are specifically exempt from the provisions of this section.

Sec. 5-09.08. Enforcement; Penalties; Declaration of Nuisance; Joint and Several Responsibility.

(a) A violation of this article shall be a public nuisance and may be abated by the City Attorney.

(b) Any violation of the provisions of this article shall be an infraction or subject to administrative citation, at the discretion of the City Attorney. Each hour such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

(1) The first violation of this article shall be subject to a fine of \$250.00.

(2) The second violation of this article during a twelve-month period shall be subject to a fine of \$500.00.

(3) The third and subsequent violations of this article during a twelve-month period shall be subject to a fine of \$1,000.00

SECTION 4. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Salinas City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, clause, and phase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. Effective Date. This Ordinance will take effect thirty (30) days from and after its adoption.

SECTION 6. California Environmental Quality Act. This ordinance is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Guidelines section 15061(b)(3). This exemption is allowed when the activity, in this case the recommendation of adoption of the ordinance, does not have the potential for causing a significant effect on the environment.

PASSED AND ADOPTED this ____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Joe Gunter, Mayor

ATTEST:

Patricia M. Barajas, City Clerk

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney