

CITY OF BENICIA

ORDINANCE NO. 18 - 15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING CHAPTER 8.20 (NOISE REGULATIONS) OF TITLE 8 (HEALTH AND SAFETY) OF THE BENICIA MUNICIPAL CODE

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA HEREBY ORDAINS as follows:

Section 1.

Section 8.20.020 (Definitions) of Chapter 8.20 (Noise Regulations) of Title 8 (Health and Safety) of the Benicia Municipal Code is repealed in its entirety and replace with the following definitions:

“A-weighted” or “A-weighting” means the sound pressure level in decibels that reflects the response of the human ear by reducing the values of sound at low and high frequencies generally not perceived by human hearing.

“Ambient noise” means the existing background noise level characteristic of an environment For the purpose of this chapter, ambient noise level is the level obtained when the A-weighted sound level is averaged over a period of 15 minutes without inclusion of noise from isolated identifiable sources, at the location and time of day near that at which a comparison is to be made.

“Commercial purpose” means and includes the use, operation or maintenance of any sound-amplifying equipment for the purpose of advertising any business, or any goods, or any services, or for the purpose of attracting the attention of the public to, or advertising for, or soliciting patronage or customers to or for any performance, show, entertainment, exhibition, or event, or for the purpose of demonstrating such sound equipment.

“Decibel” means a unit of measurement that indicates the relative amplitude of a sound. The zero on the decibel scale is based on the lowest sound level that the healthy, unimpaired human ear can detect. Sound levels in decibels are calculated on a logarithmic basis. An increase of 10 decibels represents a ten-fold increase in acoustic energy, while 20 decibels is 100 times more intense, 30 decibels is 1,000 times more intense, etc.

“Designated Enforcement Officer” means a City official empowered by the City Manager to enforce the municipal code, including provisions of Chapter 8.20.

“Emergency work” means work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from an imminent exposure to danger, or work by private or public utilities when restoring utility service.

“Frequency” of a function periodic in time means the reciprocal of the primitive period. The unit is the hertz and shall be specified.

“Hertz” means the complete sequence of values of a periodic quantity which occurs during a period.

“ L_{eq} ” means the equivalent energy noise level, which is the average acoustic energy content of noise for a stated period of time; thus, the L_{eq} of a time-varying noise and that of a steady noise are the same if they deliver the same acoustic energy to the ear during exposure. For evaluating community impacts, this rating scale does not vary regardless of whether the noise occurs during the day or the night.

“Motor vehicles” includes, but is not limited to, automobiles, mini-bikes, and go-carts.

“Noise” means sound judged to be unpleasant, loud or disruptive to hearing, as confirmed by a Designated Enforcement Officer. From a physics standpoint, noise is indistinguishable from sound, as both are vibrations through a medium, such as air or water. For the purposes of this chapter, noise levels will be described in decibels.

“Noise level” – see “sound level”.

“Noise sensitive land uses” includes residences, transient lodging, hospitals, nursing homes, theaters, auditoriums, churches, schools, and libraries.

“Noncommercial purpose” means the use, operation or maintenance of any sound equipment for other than a commercial purpose. “Noncommercial purpose” means and includes, but is not limited to, philanthropic, political, patriotic and charitable purposes.

“Residential” means property within a residential zone district.

“Person” means a person, firm, association, copartnership, joint venture, corporation, or any entity public or private in nature.

“Sound-amplifying equipment” means any machine or device for the amplification of the human voice, music, or any other sound. “Sound-amplifying equipment” shall not include standard automobile radios when used and heard only by the occupants of the vehicle in which the automobile radio is installed. “Sound-amplifying equipment,” as used in this chapter, shall not include warning devices on authorized emergency vehicles or horns or other warning devices on any vehicle used only for traffic safety purposes.

“Sound level” or “noise level,” in decibels (dB), is the sound measured with the “A” weighting and slow response as measured by a sound level meter.

“Sound level meter” means an instrument including a microphone, an amplifier, an output meter, and frequency weighting networks for the measurement of sound levels that satisfies the pertinent requirements in American Standard Specifications for sound level meters S1.4-1971 or the most recent revision thereof.

Section 2.

Section 8.20.040 (Sound-amplifying equipment – Registration – Required) of Chapter 8.20 (Noise Regulations) of Title 8 (Health and Safety) of the Benicia Municipal Code is hereby repealed.

Section 3.

Section 8.20.050 (Sound-amplifying equipment – Registration – Statement filing and approval) of Chapter 8.20 (Noise Regulations) of Title 8 (Health and Safety) of the Benicia Municipal Code is hereby repealed.

Section 4.

Section 8.20.060 (Sound-amplifying equipment – Registration – Fee) of Chapter 8.20 (Noise Regulations) of Title 8 (Health and Safety) of the Benicia Municipal Code is hereby repealed.

Section 5.

Section 8.20.070 (Sound-amplifying equipment – Registration – Appeal from disapproval) of Chapter 8.20 (Noise Regulations) of Title 8 (Health and Safety) of the Benicia Municipal Code is hereby repealed.

Section 6.

Section 8.20.080 (Sound-amplifying equipment – Use regulations) of Chapter 8.20 (Noise Regulations) of Title 8 (Health and Safety) of the Benicia Municipal Code is stricken in its entirety and amended to read as follows:

The use of sound-amplifying equipment for commercial purposes and noncommercial purposes shall be subject to the following regulations:

- A. The only sounds permitted shall be either music or human speech, or both.
- B. The operation of sound-amplifying equipment shall only occur between the hours of 9:00 a.m. and 8:00 p.m. Monday through Saturday unless otherwise authorized by a use permit, and 9:00 a.m. to 6:00 p.m. on Sunday.
- C. Sound levels emanating from sound-amplifying equipment shall not exceed the following maximum allowable sound levels:

Maximum Amplified Sound Levels (dB) Requires Temporary Use Permit or Use Permit		
Noise Zone	9 a.m. – 8 p.m.²	8 p.m. – 9:30 p.m.^{1,2}
Residential Neighborhoods	75	70
Area Within One Block of First Street	75	70
Commercial (all) and First Street	80	75 Mon -Thurs 80 Fri - Sat
Industrial	N/A	N/A
¹ Temporary Use Permit or Use Permit required		
² No amplified sound after 6 p.m. Sundays		

D. Notwithstanding the provisions of subsection (C) of this section, sound-amplifying equipment shall not be operated within 200 feet of churches, schools, hospitals, or city or county buildings unless specifically authorized by the city manager or their designee or by permit issued pursuant to Title 17 or the Downtown Mixed Use Master Plan (DMUMP).

E. 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.

Section 7.

Section 8.20.090 (Radios, television sets and similar devices) of Chapter 8.20 (Noise Regulations) of Title 8 (Health and Safety) of the Benicia Municipal Code is amended in its to read as follows:

8.20.090 Radios, television sets and similar devices

Use Restricted. It is unlawful for any person within any residential neighborhood of the city to use or operate any radio receiving set, musical instrument, phonograph, television set, or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of neighboring residents or any reasonable person of normal sensitiveness residing in the area.

Section 8.

Section 8.20.110 (Drums – Use Restricted) of Chapter 8.20 (Noise Regulations) of Title 8 (Health and Safety) of the Benicia Municipal Code is hereby repealed in its entirety.

Section 9.

Section 8.20.120 (Schools, hospitals and churches) of Chapter 8.20 (Noise Regulations) of Title 8 (Health and Safety) of the Benicia Municipal Code is renamed Noise sensitive land uses and the text is repealed and replaced with the following:

8.20.120 Noise sensitive land uses.

A. New noise sources shall not encroach upon existing noise-sensitive land uses. New development with new stationary noise sources shall be located, designed and constructed to meet the noise standards in the table below with regard to daily or weekly operating conditions.

B. New noise sensitive land uses, including outdoor living spaces, shall be located, designed and constructed to meet the noise standards in the following table.

C. City signals and warning devices are exempt from these standards.

Noise Level Performance Standards¹ for Noise Sensitive Land Uses

Land Use	Exterior (L_{eq} dBA)^{2,3}		Interior (L_{eq} dBA)^{2,3}	
	<i>7 a.m. - 10 p.m.</i>	<i>10 p.m. - 7 a.m.</i>	<i>7 a.m. - 10 p.m.</i>	<i>10 p.m. - 7 a.m.</i>
Residential	55	50	40	35
Transient Lodging	55	50	40	35
Hospitals	-	-	40	35
Nursing Homes	55	50	40	35
Theaters, Auditoriums	-	-	35	35
Churches	55	50	40	40
Schools	55	50	45	45
Libraries	55	50	45	45

¹*The noise level performance standards shall be applied to a typical hour of operation. When a peak hour of operation is expected to occur consistently during daily or weekly operations, the standards shall also be applied to those operations.*

²*Noise levels shall be lowered by five dB for tonal noises (humming, high-pitched tones, speech music, or recurring impulsive noises). This lowering of the standard does not apply to residential units established in conjunction with industrial or commercial caretaker dwellings.*

³*For noise sources that occur on an infrequent basis and are considered to be safety equipment (such as flaring or pressure relief valves), a maximum noise level of 75 dB is acceptable, as measured from the receiver's property line.*

Section 10.

Section 8.20.140 (Machinery, equipment, fans and air conditioning) of Chapter 8.20 (Noise Regulations) of Title 8 (Health and Safety) of the Benicia Municipal Code is repealed and replaced with the following:

8.20.140 Machinery, equipment, fans and air conditioning.

It is unlawful for any person to operate any machinery, equipment, pump, fan, air conditioning apparatus, or similar mechanical device in any manner so as to create any noise which would cause the noise level at the property line of any property to exceed the maximum allowable noise

level in Section 8.20.190 by more than three decibels.

Section 11.

Section 8.20.150 (Construction of buildings and projects) of Chapter 8.20 (Noise Regulations) of Title 8 (Health and Safety) of the Benicia Municipal Code is repealed and replaced with the following:

8.20.150 Construction of buildings and projects.

It is unlawful for any person within:

- A. A residential zone;
- B. A district within the Downtown Mixed Use Master Plan; or
- C. A radius of 500 feet from a residential zone or downtown mixed use district;

to operate equipment or perform any outside construction or repair work on buildings, structures, or projects or to operate any heavy construction equipment (e.g., pile driver, power shovel, pneumatic hammer, derrick, power hoist) prior to 7:00 a.m. or after 7:00 p.m. on Monday through Friday, or prior to 8:00 a.m. or after 7:00 p.m. on Saturdays, or anytime on Sundays, in such a manner that a reasonable person of normal sensitiveness residing in the area is caused discomfort or annoyance unless beforehand a permit therefor has been duly obtained from the city manager or their designee. Grading permits issued pursuant to Chapter 15.28 shall be subject to these provisions for work within 500 feet of a residential zone or downtown mixed use district. No permit shall be required to perform emergency work as defined in BMC 8.20.020.

Section 12.

Section 8.20.190 (Ambient base noise level) of Chapter 8.20 (Noise Regulations) of Title 8 (Health and Safety) of the Benicia Municipal Code is renamed Maximum allowable sound level and the text is repealed and replaced with the following:

8.20.190 Maximum allowable sound level.

A. The maximum allowable noise levels by noise zone shall apply as follows, except as expressly permitted otherwise.

Maximum Allowed Sound Levels (dB)			
By Time of Day and Geographic Area and Land Use			
Noise Zone	7 a.m. – 8 p.m.	8 p.m. – 10 p.m.	10 p.m. – 7 p.m.
Residential Neighborhoods	60	55	50
Area Within One Block of First Street	60	55	55
Commercial (all) and First Street	65	60	60
Industrial	75	75	75

Section 13.

Section 8.20.210 (Petition for temporary relief from noise regulations) of Chapter 8.20 (Noise Regulations) of Title 8 (Health and Safety) of the Benicia Municipal Code is repealed and replaced with the following:

A. Temporary relief from the noise regulations specified in this chapter may be granted through any of the procedures identified below. The noise regulations of this chapter shall not be exceeded until such time as the applicable permit of the city has been issued.

1. Approval of a Special Event Permit in accordance with adopted City procedures.
2. Approval of a Petition for Temporary Relief for any use or event that does not qualify for a Special Event Permit or a Use Permit under Title 17 or the Downtown Mixed Use Master Plan. A Petition for Temporary Relief may be requested of the city council. Any such request shall be submitted in writing to the city clerk, accompanied by a fee set by the City Council. The city council shall hear such petition at the next available city council meeting after the filing of said request, allowing reasonable time to evaluate the request and prepare a staff report. Upon hearing all the evidence, the city council may grant temporary relief from the provisions of this chapter upon such terms and conditions as the council may see fit if the council finds that the temporary relief does not endanger the health, welfare or safety of the residents of the city. The duration of the relief will be established by the city council at the time of granting the Petition for Temporary Relief; however, Temporary Relief shall not substitute for a land use permit granted under Title 17 and shall not be approved for an ongoing use of unlimited or seasonal duration. The decision of the city council shall be final.

B. Relief shall not be granted for any of the procedural requirements as set forth in this chapter.

Section 14.

Section 8.20.230 (Violation – Additional remedy) of Chapter 8.20 (Noise Regulations) of Title 8 (Health and Safety) of the Benicia Municipal Code is renamed Violations and the text is repealed and replaced with the following:

8.20.230 Violations.

A. The provisions of this chapter shall be enforced by the designated enforcement officer unless otherwise expressly provided herein.

B. Upon receipt of a complaint, the designated enforcement officer may investigate and assess whether the alleged noise levels exceed the noise standards set forth in this chapter.

1. The designated enforcement officer shall measure the noise level at the receiving use property line. The microphone shall be located 4 to 5 feet above the ground and 10 feet or more from the nearest reflective surface, where possible. However, in cases where another elevation is appropriate as determined by the designated enforcement officer, the latter may be utilized.

C. A violation may be determined in either of the following manners:

1. Prima Facie Violation. Any noise level exceeding the maximum allowable noise level for the noise zone of a receiving property at the property line of the receiving property or, of a condominium or apartment house, within any adjoining apartment, by more than three decibels shall be deemed to be prima facie evidence of a violation of the provisions of this chapter, except as otherwise provided herein. If the noise measurement is to be taken at a shared property line between two different noise zones, the maximum allowable noise level standard for the lowest allowed noise level will apply.

2. Unreasonable noise level. A noise level deemed unreasonable by the designated enforcement officer.

D. If the designated enforcement officer has reason to believe that any provision of this chapter has been violated, the designated enforcement officer may cause written notice to be served upon the property owner and the alleged violator, if known. Such notice shall be issued in accordance with the procedures set forth in Chapter 8.06 (Neighborhood Nuisance Code).

E. Additional remedy. As an additional remedy, the operation or maintenance of any device, instrument, vehicle, or machinery in violation of any provision of this chapter shall be deemed and is declared to be, a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

Section 15.

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

On motion of Council Member **Young**, seconded by Council Member **Hughes**, the foregoing ordinance was introduced at a regular meeting of the City Council on the 5th day of June, 2018, and adopted at a regular meeting of the Council held on the 19th day of June, 2018, by the following vote:

Ayes: **Council Members Campbell, Hughes, and Vice Mayor Young**

Noes: **Council Member Schwartzman and Mayor Patterson**

Absent: **None**

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

Date