



MEMORANDUM

TO: CITY COUNCIL

FROM: DAVID HIRSCH, ASSISTANT CITY ATTORNEY

SUBJECT: CONSIDERATION OF AN ORDINANCE ADDING SECTION 9.16.072 TO CHAPTER 9.16 OF THE ARROYO GRANDE MUNICIPAL CODE RELATING TO MUSIC OR NOISE AFTER 10:00 P.M. IN COMMERCIAL DISTRICTS

DATE: OCTOBER 28, 2014

RECOMMENDATION:

It is recommended that the City Council introduce an ordinance adding Section 9.16.072 to Chapter 9.16 of the Arroyo Grande Municipal Code adding new regulations relating to music or noise after 10:00 P.M. in Commercial Districts.

IMPACT TO FINANCIAL AND PERSONNEL RESOURCES:

No immediate financial impacts have been identified by adding the proposed noise restrictions to the Municipal Code. The Police Department currently responds to complaints about noise in Commercial Districts and the amendment will provide them with an additional enforcement tool.

BACKGROUND:

At the August 12, 2014 City Council meeting, a report was presented relating to complaints that have been received about late evening noise disturbances in the Village that were primarily related to one of the local drinking establishments. These complaints primarily involved loud music, although other issues at the location have included damage to City property outside of the establishment, fights and people yelling.

Based upon staff's recommendation, the City Council directed that several actions be pursued to address the problems that have been identified. This included developing an ordinance to prohibit excessive outdoor noise after 10:00 p.m., as well as amendments to the Municipal Code to provide additional nuisance abatement provisions. Accordingly, the proposed ordinance has been prepared to amend the Arroyo Grande Municipal Code to regulate music or noise after 10:00 p.m. in Commercial Districts. In addition to addressing music or noise coming from non-enclosed areas, based upon direction from the August 12th City Council meeting

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provisions have been included to address such sounds that are audible at adjacent properties or streets from enclosed areas.

ANALYSIS OF ISSUES:

Chapter 9.16 of the Arroyo Grande Municipal Code contains the City's noise regulations. The standards for acceptable exterior and interior noise levels contained in the Code are based upon sound level meter standards that are measured by decibels. The proposed ordinance would add a new section to Chapter 9.16 entitled "Music or Noise after 10:00 p.m. in Commercial Districts". This section will provide that notwithstanding the sound level meter standards in the Code, it is also unlawful to play, operate or cause to be played or operated any radio, musical instrument or other device or apparatus making or reproducing musical or other sounds with or without amplification within any outdoor, non-enclosed area in Commercial Districts between the hours of 10:00 p.m. and 7:00 a.m. The ordinance also includes clarifying language so that the prohibition is not interpreted to prevent the reasonable use and enjoyment of private residences that are located in Commercial Districts.

In addition, the proposed language also addresses noise that is audible from adjacent properties or streets from enclosed areas between 10:00 p.m. and 7:00 a.m. All doors are to be shut and remain shut during such times that the music or other sounds are being made during the restricted hours.

With regard to the direction to prepare new nuisance abatement provisions, they have been drafted and take the form of a comprehensive nuisance ordinance relating to legal nonconforming alcoholic beverage commercial sales establishments that do not have a conditional use permit. Since they relate to zoning and legal nonconforming issues, these provisions are proposed to be added to the Development Code and therefore require public hearings at the Planning Commission and City Council before they can be adopted. Accordingly, a draft ordinance will be presented at a future Planning Commission meeting and will thereafter come to the City Council for its consideration.

ALTERNATIVES:

The following alternatives are provided for the Council's consideration:

1. Introduce the ordinance adding Section 9.16.072 to the Arroyo Grande Municipal Code adding new regulations relating to music or noise after 10:00 P.M. in Commercial Districts;
2. Do not introduce the Ordinance; or
3. Provide direction to staff.

ADVANTAGES:

Adoption of the proposed ordinance will provide a new tool to address noise issues in Commercial Districts in the City that occur late in the evening.

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DISADVANTAGES:

No disadvantages with the recommended action are identified.

ENVIRONMENTAL REVIEW:

No environmental review is required for this item.

PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted in front of City Hall on Thursday, October 23, 2014. The Agenda and staff report were posted on the City's website on Friday, October 24, 2014.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE ADDING SECTION 9.16.072 TO CHAPTER 9.16 OF THE ARROYO GRANDE MUNICIPAL CODE RELATING TO MUSIC OR NOISE AFTER 10:00 P.M. IN COMMERCIAL DISTRICTS

WHEREAS, the provisions in Chapter 9.16 of the Arroyo Grande Municipal Code contain standards for acceptable exterior and interior noise levels based upon sound level meter standards measured by decibels; and

WHEREAS, the City Council has determined that in order to protect persons from excessive sound created by radios, musical instruments or other devices making or reproducing musical or other sounds in Commercial Districts in the evening hours, that additional prohibitions are necessary to supplement the sound level meter standards contained in Chapter 9.16; and

WHEREAS, such noise prohibitions are necessary and appropriate in order to eliminate and reduce unnecessary noises that are harmful or otherwise detrimental to the enjoyment of life and property, and maintenance of business in Commercial Districts.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Arroyo Grande as follows:

SECTION 1. Section 9.16.072 hereby added to Chapter 9.16 of the Arroyo Grande Municipal Code to read as follows

“9.16.072 Music or Noise after 10:00 p.m. in Commercial Districts.

Notwithstanding the sound level meter standards described in this Chapter, it is nonetheless unlawful for any person, entity or establishment to:

- a. **Non-Enclosed Areas.** Play, operate or cause to be played or operated any radio, musical instrument or other device or apparatus making or reproducing musical or other sounds with or without amplification within any outdoor, non-enclosed area in Commercial Districts between the hours of 10:00 p.m. and 7:00 a.m. This prohibition shall not be interpreted to prevent the reasonable use and enjoyment of a private residence located in Commercial Districts. As an example, the listening of music or the television on the porch of a home before or after the stated hours is not a violation of this Section provided the activity is conducted in such a manner as to not be plainly audible from any adjacent property or the centerline of any street or right-of-way.

- b. **Enclosed Areas.** No person, entity or establishment may play, operate or cause to be played or operated, any radio, amplified or unamplified musical instrument, or other amplified or unamplified device or apparatus making or reproducing musical or other sounds in Commercial Districts between the hours of 10:00 p.m. and 7:00 a.m. when the said sounds emanate from an enclosed structure in such a manner as to be plainly audible from any adjacent property or the centerline of any street or right-of-way. When any such devices are operated to make or reproduce music or other sounds, all doors of any facility or establishment shall be shut and remain shut during such times that the music or other sounds are being made.

SECTION 2. If any section, subsection, subdivision, paragraph, sentence, or clause of this Ordinance or any part thereof is for any reason held to be unlawful, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, or clause thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, or clause be declared unconstitutional.

SECTION 3. A summary of this Ordinance shall be published in a newspaper published and circulated in the City of Arroyo Grande at least five (5) days prior to the City Council meeting at which the proposed Ordinance is to be adopted. A certified copy of the full text of the proposed Ordinance shall be posted in the office of the City Clerk. Within fifteen (15) days after adoption of the Ordinance, the summary with the names of those City Council Members voting for and against the Ordinance shall be published again, and the City Clerk shall post a certified copy of the full text of such adopted Ordinance.

SECTION 4. This Ordinance shall take effect thirty (30) days after its adoption.

On motion by Council Member _____, seconded by Council Member _____, and by the following roll call vote to wit:

AYES:

NOES:

ABSENT:

the foregoing Ordinance was adopted this ____ day of _____, 2014.

TONY FERRARA, MAYOR

ATTEST:

KELLY WETMORE, CITY CLERK

APPROVED AS TO CONTENT:

STEVEN ADAMS, CITY MANAGER

APPROVED AS TO FORM:

TIMOTHY J. CARMEL, CITY ATTORNEY