City of Sacramento
Law and Legislation Committee Report
915 I Street Sacramento, CA 95814
www.cityofsacramento.org

File ID: 2023-00339 | 4/4/2023 | **Discussion Item 2.**

Proposed Ordinance Amending and Deleting Various Sections of Chapter 8.68 of the Sacramento City Code, Relating To Noise Control

File ID: 2023-00339

Location: Citywide

Recommendation: Approve proposed ordinance amending and deleting various sections of Chapter 8.68 of the Sacramento City Code, relating to noise control, and forward to the City Council for adoption

Contact: Peter Lemos Code & Housing Enforcement Chief (916) 808-8183 Community Development Department

Presenter: Peter Lemos Code & Housing Enforcement Chief (916) 808-8183 Community Development Department

Attachments
1-Chapter 8.68 Noise Control Amendments - Final Redline
2-Chapter 8.68 Noise Control Amendments - Final Clean

Description/Analysis

Issue Detail: Sacramento City Code Chapter 8.68 requires modification and modernization to assist in enforcement and ensure a safe and peaceful environment for all residents, businesses, customers, and visitors. Over the years, the City's noise control and permitting ordinance has not kept pace with current needs and requires a comprehensive review. Some sections have become outdated or impractical to enforce and the ordinance lacks certain provisions that apply to specific conduct that is harassing, intimidating, intrusive or disturbs the peace. Updating existing sections of the City Code will enhance the City's ability to fulfill the community's expectations for a safe, vibrant, and peaceful environment while contributing to a comprehensive approach to handling quality of life issues within the community. This is the first step of a multi-phase update to the City's noise control ordinance to address the present needs of the City, as the City continues its transformation into a vibrant destination for entertainment, nightlife, and social events in the region.

On March 7, 2023, the Law and Legislation Committee provided direction to begin modernization of Chapter 8.68 of the Sacramento City Code and bring back to the committee proposed amendments

to the City's noise control ordinance aimed at curtailing disturbances to which patients and employees are subjected at health care facilities.

On March 21, 2023, staff provided an update to the Law and Legislative Committee on the progress made with the changes and approvals to the noise ordinance. The committee requested staff to bring back the completed changes to sound ordinance and to then take it directly to the City Council for approval.

Proposed Ordinance Amending and Deleting Various Sections of Chapter 8.68 of the Sacramento City Code, Relating To Noise Control: This ordinance aims to prevent the obstruction, harassment, or intimidation of persons entering and exiting health care facilities, while preserving the fundamental constitutional right of others to assemble peaceably and express opinions on matters of public concern by imposing narrowly tailored, content-neutral, regulations by creating a 100-foot quiet zone around health care facilities. The ordinance additionally includes technical updates to outdated provisions, modernizes the enforcement mechanism to conform with other provisions of the City Code, and deletes certain unnecessary provisions.

Policy Considerations: The City Council has a long-standing commitment to supporting policies that protect its residents, visitors, and health facilities from quality-of-life issues that threaten the health, morals, safety, comfort, convenience, and welfare of the community, while supporting people's right to free speech and the enjoyment of entertainment and arts.

Economic Impacts: None

Environmental Considerations: City Council Rules of Procedure generally require that all proposals for ordinances must be reviewed by the Law and Legislation Committee prior to Council review and adoption. The review by the Law and Legislation Committee is not itself a project under the California Environmental Quality Act (CEQA) because it is a request for input and recommendation as an administrative activity that will not result in any direct or indirect physical change in the environment. (CEQA guidelines section 15378(b)(5).) Environmental review pursuant to CEQA will be conducted prior to any adoption of the proposed ordinance.

Sustainability: N/A

Commission/Committee Action: Approve changes to Chapter 8.68 of the Sacramento City Code to protect patients and employees of health care facilities from harassment and provide clear enforcement procedures for violations of the noise control ordinance.

Rationale for Recommendation: Local municipalities can regulate certain types of activities taking place upon streets, sidewalks, and other traditional public fora provided there is a significant government interest, the regulations are narrowly tailored, and alternative methods for individuals to

express their beliefs and ideas remain available. To ensure the commitment to protecting the City's residents, visitors, and businesses, the proposed changes to the Sacramento City Code are the first step in modernizing the noise control ordinance to reflect current municipal practices concerning quality of life issues while simultaneously recognizing individuals' ability to express their ideas and beliefs upon streets, sidewalks, and other public places.

Financial Considerations: Not applicable.

ORDINANCE NO. 2023-XXXX

Adopted by the Sacramento City Council

[Date Adopted]

AN ORDINANCE AMENDING AND DELETING VARIOUS SECTIONS OF CHAPTER 8.68 OF THE SACRAMENTO CITY CODE, RELATING TO NOISE CONTROL

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

The City Council finds and determines as follows:

A. Every person in the City of Sacramento has a basic and fundamental right to privacy protected by the United States Constitution and explicitly guaranteed in California's Constitution, Article 1, Section 1, including the right to seek and obtain all health care services permitted under the laws of this state. Access to these services is a matter of critical importance not only to the individual, but also to the health and welfare of all citizens of the city. Intentional efforts to harass an individual in order to deter or prevent the individual from exercising his or her right to seek and obtain health care services are contrary to the interests of the people of Sacramento, and can be injurious to the patient's health, even if the patient is not physically barred from entry. Some persons may be sufficiently intimidated by harassing conduct to put off necessary or timely medical treatment entirely. Protests at entrances to health care facilities in the City of Sacramento have often disrupted the operation of the facilities, as well as the ability of individuals to seek and obtain services within the facilities.

B. Every person in the City of Sacramento also has the fundamental constitutional right to assemble peaceably and express opinions on matters of public concern. Peace officers often have difficulty determining when the exercise of the right to protest violates the competing right of those seeking access to health care facilities. The provisions of this ordinance promote the full exercise of these rights and strike an appropriate accommodation between them.

C. Continued incidents and altercations at, and adjacent to, health care facilities in the City of Sacramento raise serious and alarming safety concerns regarding the constitutionally protected right to access health care services.

D. Prior to adoption of this ordinance, law enforcement attempted other measures to minimize the likelihood of incidents and altercations at health care facilities through intervention, mediation, or de-escalation tactics, and enforcement of criminal law.

E. This ordinance creates a quiet zone around health care facilities. The function of the quiet zone is to prohibit specific conduct that may obstruct, deter, delay, or prevent individuals from obtaining or providing necessary health care services because they are forced to endure harassing, obstructive, or intimidating behavior. These factors lead to increased patient stress that may affect the efficacy and complication rate of the medical care sought and can adversely affect patients' physical and emotional health and well-being.

F. This ordinance imposes narrowly tailored, content-neutral regulations to protect the right to access health care services by restricting conduct that obstructs access to health care by creating a 100-foot quiet zone around health care facilities.

G. This ordinance is not intended to interfere with the free speech rights of those protesting outside of health care facilities. Rather, this ordinance only restricts the use of a sound amplifier within 100 feet of the property line of health care facilities. This ordinance protects the rights of both those seeking access to health care services and those who gather outside of health care facilities in the city to express opinions on matters of public concern. Empirical evidence, including ordinances adopted by other jurisdictions, indicates that creating this quiet zone minimizes, reduces, or eliminates harassing, intimidating, or obstructive conduct and at the same time allows any protected, expressive activity to occur in close enough proximity to reach the intended audience.

H. The modest scope of the ordinance is content-neutral, narrowly tailored to serve a significant governmental interest, and provides alternative avenues of communication. The reasonable time, place, and manner restrictions in this ordinance prevent the negative effects of harassing, intimidating, and obstructive conduct around health care facilities, without targeting the message or topic of speech. The restrictions are narrowly tailored to reduce or eliminate the harassing, intimidating, or obstructive conduct created by amplified sound and allow ample alternative means of communicating, including, but not limited to unamplified speech, distribution of written material, and display of signs and placards.

I. This ordinance is not intended to create any limited, designated, or general public fora. Rather, it is intended to protect those who seek access to health care services from conduct that violates their rights.

SECTION 2.

A. Section 8.68.040 of the Sacramento City Code is hereby amended as follows:

1. The definition of "health care facility" is added to read as follows:

> "Health care facility" means any facility licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the California Health and Safety Code, any health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the California Health and Safety Code, or any facility where health care services are regularly provided by persons licensed under Division 2 (commencing with Section 500) of the California Business and Professions Code, the Osteopathic Initiative Act, or Chiropractic Initiative Act.

2. The definition of "sound amplifier" is added to read as follows:

> "Sound amplifier" means any mechanical or electronic device that can increase the volume of a sound beyond that of a conversational speaking voice.

B. Except as amended by subsection A above, all provisions of section 8.68.040 remain unchanged and in full effect.

SECTION 3.

Section 8.68.100 of the Sacramento City Code is hereby amended to read as follows:

Section 8.68.100 Sound amplifiers in certain areas. ~~Schools, hospitals and churches.~~

~~It is unlawful for any person to create any noise which causes the noise level at any school, hospital or church while the same is in use to exceed the noise standards specified in Section 8.68.060 of this chapter or to create any noise which unreasonably interferes with the use of such institution or unreasonably disturbs or annoys patients in the hospital. In any disputed case, interfering noise which is ten (10) dBA or more, greater than the ambient noise level at the building, shall be deemed excessive and unlawful.~~ A. It is unlawful for any person use a sound amplifier in a public place or upon any public sidewalk, street, alley, highway, or other public right-of-way of the city within 100 feet of a health care facility during its hours of operation. The distance is measured from the property line of the property upon which the health care facility is located.

B. Subsection A shall not apply when the person operating the sound amplifier is a law enforcement officer, member of the fire department, or other public safety officer in the performance of official duties.

SECTION 4.

A. Subsection A of section 8.68.160 of the Sacramento City Code is amended to read as follows:

A. It is unlawful for any person to conduct, or permit to be conducted on its property, any outdoor recreational activity, including, but not limited to, athletic events, sporting events, entertainment events and concerts at which amplified noise, amplified music, or amplified sound exceeding the following levels is created: ~~ninety-six (~~96~~)~~ dba leq during the months of September and October; ~~ninety-eight (~~98~~)~~ dba leq during the months of November through August. The noise, music or sound shall be measured at the sound booth or other reasonable location which is not more than ~~one hundred fifty (~~150~~)~~ feet from the source. Every person conducting, or permitting to be conducted, on its property, any outdoor recreational activity shall~~, upon request,~~ permit the ~~chief of the environmental health division, Sacramento environmental management department, or the chief's~~ city manager or designee~~,~~ to place a sound level ~~monitor~~meter (with or without an accompanying staff member) at a location described in this subsection to monitor sound levels.

B. Except as amended by subsection A above, all provisions of section 8.68.080 remain unchanged and in full effect.

SECTION 5.

Section 8.68.220 of the Sacramento City Code is amended to read as follows:

Section 8.68.220 ~~Administration~~Authority.

~~Except for the enforcement of Section 8.68.200 of this chapter which shall be the responsibility of the chief of police, and except for the enforcement of Section 8.68.060 of this chapter which shall be the responsibility of the director of public works and the director of utilities in addition to any other person authorized to enforce that section, the administration of this chapter is vested in the Sacramento City/county health officer. The health officer shall be responsible for:~~

~~A. Employing individuals trained in acoustical engineering or an equivalent field to assist the health officer in the administration of this chapter;~~

~~B. Training field inspectors;~~

~~C. Procuring measuring instruments and training inspectors in their calibration and operation;~~

~~D. Conducting a public education program in all aspects of noise control;~~

~~E. Coordinating the noise control program with other governmental agencies.~~

The city manager or designee shall administer the provisions of this chapter.

SECTION 6.

Section 8.68.230 of the Sacramento City Code is hereby deleted.

SECTION 7.

Section 8.68.240 of the Sacramento City Code is hereby deleted.

SECTION 8.

Section 8.68.280 of the Sacramento City Code is amended to read as follows:

Section 8.68.280 Violations and penalties.

A. ~~Upon the receipt of a complaint from any person, the chief of police, the health officer or their duly authorized representatives may investigate and assess whether the alleged noise levels exceed the noise standards set forth in this chapter. If such officers have reason to believe that any provision(s) of this chapter has been violated, they may cause written notice to be served upon the alleged violator. Such notice shall specify the provision(s) of this chapter alleged to have been violated and the facts alleged to constitute a violation, including dBA readings noted and the time and place of their detection and may include an order that corrective action be taken within a specified time. If corrective~~

~~action is not taken within such specified time or any extension thereof approved by the health officer, upon conviction the violation shall constitute a misdemeanor. Each such violation committed or permitted to continue shall constitute a separate offense and shall be punishable as such.~~Any person who violates a provision of this chapter is subject to criminal sanctions, civil actions, and administrative penalties pursuant to chapter 1.28.

1. Except as provided in subsection A.2, prior to citing or arresting a person for violating the provisions of this chapter, the city manager or designee shall issue a written notice to the person. The notice must include each provision of this chapter alleged to have been violated; the facts alleged to constitute a violation; the dBA readings noted and the time and place of those readings (if applicable); and an order that corrective action be taken immediately or within a specified time period. If the person does not take the corrective action required by the notice, the person is guilty of a misdemeanor.

2. Prior to citing or arresting a person for violating sections 8.68.100, 8.68.140, or 8.68.200, the city manager or designee shall provide to the person an oral notice to cease the unlawful noise. If the person does not cease the unlawful noise as required by the oral notice, the person is guilty of a misdemeanor.

3. Notwithstanding any contrary provision of this code, a person commits a separate violation of section 8.68.060 for each 15-minute period in which the violation occurs, and the administrative penalty for each violation is $1,000.

B. ~~Notwithstanding any contrary provision of this code, each fifteen (15) minute period that a violation of Section 8.68.060 occurs shall constitute a separate violation. The administrative penalty for each violation of Section 8.68.060 shall be one thousand dollars ($1,000.00).~~ Violations of this chapter are hereby declared to be a public nuisance.

C. Any person who violates a provision of this chapter is liable for civil penalties of not less than $250 or more than $25,000 for each day the violation continues.

D. All remedies prescribed under this chapter are cumulative and the election of one or more remedies does not bar the city from the pursuit of any other remedy to enforce this chapter.

SECTION 9.

Section 8.68.290 of the Sacramento City Code is hereby deleted.

ORDINANCE NO. 2023-XXXX

Adopted by the Sacramento City Council

[Date Adopted]

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> "Sound amplifier" means any mechanical or electronic device that can increase the volume of a sound beyond that of a conversational speaking voice.

B. Except as amended by subsection A above, all provisions of section 8.68.040 remain unchanged and in full effect.

SECTION 3.

Section 8.68.100 of the Sacramento City Code is hereby amended to read as follows:

Section 8.68.100 Sound amplifiers in certain areas.

A. It is unlawful for any person use a sound amplifier in a public place or upon any public sidewalk, street, alley, highway, or other public right-of-way of the city within 100 feet of a health care facility during its hours of operation. The distance is measured from the property line of the property upon which the health care facility is located.

B. Subsection A shall not apply when the person operating the sound amplifier is a law enforcement officer, member of the fire department, or other public safety officer in the performance of official duties.

SECTION 4.

A. Subsection A of section 8.68.160 of the Sacramento City Code is amended to read as follows:

A. It is unlawful for any person to conduct, or permit to be conducted on its property, any outdoor recreational activity, including, but not limited to, athletic events, sporting events, entertainment events and concerts at which amplified noise, amplified music, or amplified sound exceeding the following levels is created: 96 dba leq during the months of September and October; 98 dba leq during the months of November through August. The noise, music or sound shall be measured at the sound booth or other reasonable location which is not more than 150 feet from the source. Every person conducting, or permitting to be conducted, on its property, any outdoor recreational activity shall permit the city manager or designee to place a sound level meter (with or without an accompanying staff member) at a location described in this subsection to monitor sound levels.

B. Except as amended by subsection A above, all provisions of section 8.68.080 remain unchanged and in full effect.

SECTION 5.

Section 8.68.220 of the Sacramento City Code is amended to read as follows:

Section 8.68.220 Authority.

The city manager or designee shall administer the provisions of this chapter.

SECTION 6.

Section 8.68.230 of the Sacramento City Code is hereby deleted.

SECTION 7.

Section 8.68.240 of the Sacramento City Code is hereby deleted.

SECTION 8.

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Section 8.68.280 Violations and penalties.

A. Any person who violates a provision of this chapter is subject to criminal sanctions, civil actions, and administrative penalties pursuant to chapter 1.28.

1. Except as provided in subsection A.2, prior to citing or arresting a person for violating the provisions of this chapter, the city manager or designee shall issue a written notice to the person. The notice must include each provision of this chapter alleged to have been violated; the facts alleged to constitute a violation; the dBA readings noted and the time and place of those readings (if applicable); and an order that corrective action be taken immediately or within a specified time period. If the person does not take the corrective action required by the notice, the person is guilty of a misdemeanor.

2. Prior to citing or arresting a person for violating sections 8.68.100, 8.68.140, or 8.68.200, the city manager or designee shall provide to the person an oral notice to cease the unlawful noise. If the person does not cease the unlawful noise as required by the oral notice, the person is guilty of a misdemeanor.

3. Notwithstanding any contrary provision of this code, a person commits a separate violation of section 8.68.060 for each 15-minute period in which the violation occurs, and the administrative penalty for each violation is $1,000.

B. Violations of this chapter are hereby declared to be a public nuisance.

C. Any person who violates a provision of this chapter is liable for civil penalties of not less than $250 or more than $25,000 for each day the violation continues.

D. All remedies prescribed under this chapter are cumulative and the election of one or more remedies does not bar the city from the pursuit of any other remedy to enforce this chapter.

SECTION 9.

Section 8.68.290 of the Sacramento City Code is hereby deleted.