

# Agenda Report

July 15, 2024

**TO:** Honorable Mayor and City Council

**FROM:** Michele Beal Bagneris, City Attorney

**SUBJECT:** **DIRECT THE CITY ATTORNEY TO PREPARE AN ORDINANCE AMENDING CHAPTER 9.36 OF THE PASADENA MUNICIPAL CODE, OTHERWISE KNOWN AS THE “NOISE RESTRICTIONS ORDINANCE” AND PROVIDE DIRECTION REGARDING CITY COUNCIL COMMITTEE CONSIDERATION OF FURTHER AMENDMENTS**

## **RECOMMENDATION:**

It is recommended that the City Council:

1. Find that the action proposed herein is not a “project” subject to the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 21065 and within the meaning of Section 15378(b);
2. Direct the City Attorney to prepare and return within 60 days with an ordinance amending Chapter 9.36 of the Pasadena Municipal Code, the Noise Restrictions Ordinance, as further described in this Agenda Report; and
3. Refer to the appropriate City Council standing committee for discussion and consideration regarding the scope of any further amendments to be made to Chapter 9.36 of the Pasadena Municipal Code, the Noise Restrictions Ordinance

## **BACKGROUND:**

On May 20, 2024, the City Council received public comments regarding the City’s noise ordinance and the enforcement thereof as it related to protests by members of Unite Here Local 11 at the Pasadena Hilton Hotel. The Council asked staff to return with recommended revisions to the noise ordinance. At this time, staff recommends several changes to the Noise Ordinance, Chapter 9.36 of the Pasadena Municipal Code (“PMC”) and seeks referral to the appropriate City Council subcommittee as to other amendments that may be desired.

The goal of the staff recommendation is to ensure members of the public have the opportunity to exercise their free speech rights while also balancing the need to

preserve public safety, public peace and the quiet enjoyment of property. The approach of the courts to First Amendment rights is always developing, so it is important to ensure that local law reflects the most recent developments. As a general matter, courts, including the United States Supreme Court, recognize that governments may impose restrictions on the time, place, and manner of protected speech but those regulations must be content-neutral, narrowly tailored, and leave open alternate channels for speech. *Clark v. Community for Creative Non-Violence* (1984) 468 U.S. 288, 293. Courts also prefer noise regulations that are objective rather than subjective. See *Ward v. Rock Against Racism* (1989) 491 U.S. 781, 793-795. With that in mind, staff is recommending (a) deleting PMC sections 9.36.130 – Hawkers and peddlers and 9.36.140 - Drums and (b) making significant revisions to section PMC 9.36.050 – General noise sources.

### **Recommended Deletion of Sections 9.36.130 (Hawkers and Peddlers) and 9.36.140 (Drums)**

PMC section 9.136.130 – Hawkers and peddlers reads as follows:

“It is unlawful for any person within the city to sell anything by shouting out loud within any area of the city zoned for residential uses. The provisions of this section shall not be construed to prohibit the selling by yelling of merchandise, food and beverages at licensed sporting events, parades, fairs, circuses and other similar licensed public entertainment events.”

PMC section 9.136.140 – Drums reads as follows:

“It is unlawful for any person to use any drum or other instrument or device of any kind for the purpose of attracting attention by the creation of noise within the city. This section shall not apply to any person who is a participant in a school band or duly licensed parade or who has been otherwise duly authorized to engage in such conduct.”

Unlike many other sections of the Noise Ordinance, the sections on hawkers and peddlers and drums prohibit particular noise sources, or when viewed under the most recent First Amendment analysis, certain types of speech. These sections could be viewed as “speaker-based distinctions,” of which courts have, generally, come to disapprove. See *Reed v. Town of Gilbert, Ariz* (2015) 576 U.S. 155, 170.

The removal of the above sections will not prevent the City from taking action against excessive noise, but will be a step toward removing speaker-based distinctions from the Pasadena Municipal Code so as to be consistent with more recent case law. As discussed below, staff is recommending the revision of the City’s general noise standards, which would apply to all noise sources and areas not otherwise specifically

called out in the Noise Ordinance – including drums and people selling goods, which would be treated in the same manner as any other source of noise.

### **Recommended Amendment to Section 9.36.050 (General Noise Sources)**

PMC Section 9.36.050 (A) – General noise sources prohibits noise that “exceeds the ambient noise level” by more than five decibels.

For reference, rustling leaves measure approximately 10 decibels and whispered voices measure approximately 20 decibels. Thus, regulating any noise that is more than 5 decibels over the ambient noise level at a particular location does not provide the public with the ability to engage in many kinds of audible speech – including protests that often involve some form of chanting.

Practically, this section of the Noise Ordinance has proven difficult to enforce as it requires staff to obtain not only a reading of the decibel level of the potentially offending noise, but also to obtain an ambient noise level to use as a comparison. At the time a potential noise violation is reported it can be difficult to get far enough from the noise source to obtain an accurate ambient noise level without being so far as to call into question whether the ambient noise level is a fair comparison.

Based on the foregoing, staff recommends revising section 9.36.050 to set exterior noise standards based on the land use for particular locations. Similar to the interior noise standards found in section 9.36.060, the exterior noise standards would set a maximum total decibel level that would not require City staff to measure the ambient noise level in order to enforce the Noise Ordinance. The exterior noise standards would vary based on land use, recognizing that noise levels that may be appropriate for a commercial or industrial area may not be appropriate for residential or mixed-use areas. Like the PMC’s interior noise standards, the maximum decibel level may also vary based on time of day. Other cities have taken similar approaches, including Santa Monica, Berkeley, and Laguna Beach.

Amendments as outlined above are designed to accomplish three main goals: (1) protect the First Amendment rights of members of the public, (2) allow the City to retain its ability to protect residents’ and businesses’ quiet enjoyment of their property; and (3) provide staff and the public with adequate guidance to understand and determine what conduct would be a violation of the noise ordinance. Should the Council wish to adopt the recommendation to create exterior noise standards, other sections may also need to be amended to ensure internal consistency.

### Direction for Further Changes to the Noise Ordinance

Throughout discussions regarding the Noise Ordinance, it has come to our attention that some members of the Council may be interested in making further changes to sections of the Noise Ordinance, including but not limited to, amending the rules pertaining to amplified sound on public property. These changes will require due

diligence so as to (a) ensure First Amendment compliance and (b) refine standards for some activities without creating unintended consequences for others. Given that the noise ordinance impacts various City Departments and all residents, this is an opportune time for a discussion of any other changes that may be desired beyond those addressed in this Agenda Report. For these reasons, staff suggests the City Council refer this matter to one of its City Council standing committees, with which it could work through the policy objectives in conjunction with affected stake holders.

**COUNCIL POLICY CONSIDERATION:**

This proposed action is consistent with the City Council's goal to support and promote the quality of life and the local economy.

**ENVIRONMENTAL ANALYSIS:**

CEQA excludes, from environmental review, actions that are not "projects" as defined by CEQA Guidelines Section 21065 and within the meaning of Section 15378(b). Sections 21065 and 15378(b) define a project as an action which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Section 15378 excludes from the definition of "project" organizational or administrative governmental activities that do not result in physical changes to the environment. The actions proposed herein, directing the City Attorney to prepare necessary resolutions to amend the Noise Ordinance, are organizational or administrative governmental activities that do not result in physical changes to the environment, and therefore is not a "project" as defined by CEQA. Since the action is not a project subject to CEQA, no environmental document is required.

**FISCAL IMPACT:**

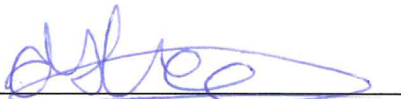
There is no fiscal impact from the proposed ordinance.

Respectfully submitted,



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