

POD-13-003

(Underline indicates addition)

(~~Strikeout~~ indicates deletion)

ORDINANCE NO. _____ (N.S.)

AN ORDINANCE AMENDING TITLE 3 DIVISION 6 CHAPTER 4 OF THE SAN DIEGO COUNTY CODE RELATED TO NOISE ABATEMENT AND CONTROL AND AMENDING TITLE 8 DIVISION 6 OF THE SAN DIEGO COUNTY CODE TO ADD CHAPTER 8 RELATED TO REQUESTS FOR REASONABLE ACCOMMODATION UNDER THE FAIR HOUSING ACTS

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors finds and determines that the San Diego County Code should be updated by amending Chapter 4 of Division 6 of Title 3 related to Hours of Operation of Construction Equipment and to General Sound Level Limits and by adding Chapter 8 to Division 6 of Title 8 to provide provisions for Reasonable Accommodations under the Fair Housing Acts. The Board finds that these amendments are reasonable and necessary for the public health, safety, convenience, and welfare.

Section 2. Section 36.404 is amended to read as follows:

SEC. 36.404. GENERAL SOUND LEVEL LIMITS.

(a) Except as provided in section 36.409 of this chapter, it shall be unlawful for any person to cause or allow the creation of any noise, which exceeds the one-hour average sound level limits in Table 36.404, when the one-hour average sound level is measured at the property line of the property on which the noise is produced or at any location on a property that is receiving the noise.

**TABLE 36.404
SOUND LEVEL LIMITS IN DECIBELS (dBA)**

ZONE	TIME	ONE-HOUR AVERAGE SOUND LEVEL LIMITS (dBA)
(1) RS, RD, RR, RMH, A70, A72, S80, S81, S90, S92, RV, and RU with a General Plan Land Use Designation density of less than 10.9 dwelling units per acre.	7 a.m. to 10 p.m.	50
	10 p.m. to 7 a.m.	45
(2) RRO, RC, RM, S86, <u>FB-V5</u> , RV and RU with a General Plan Land Use Designation density of 10.9 or more dwelling units per acre.	7 a.m. to 10 p.m.	55
	10 p.m. to 7 a.m.	50

(3) S94, <u>FB-V4</u> , <u>AL-V2</u> , <u>AL-V1</u> , <u>AL-CD</u> , <u>RM-V5</u> , <u>RM-V4</u> , <u>RM-V3</u> , <u>RM-CD</u> and all commercial zones.	7 a.m. to 10 p.m.	60
	10 p.m. to 7 a.m.	55
(4) <u>FB-V1</u> , <u>FB-V2</u> , <u>RM-V1</u> , <u>RM-V2</u> <u>V1</u> , <u>V2</u>	7 a.m. to 7 p.m.	60
	7 p.m. to 10 p.m.	55
<u>FB-V1</u> , <u>RM-V2</u>	10 p.m. to 7 a.m.	55
<u>FB-V2</u> , <u>RM-V1</u>	10 p.m. to 7 a.m.	50
<u>FB-V3</u>	7 a.m. to 10 p.m.	70
	10 p.m. to 7 a.m.	65
(5) M50, M52, and M54	Anytime	70
(6) S82, M56, and M58.	Anytime	75
(7) S88 (see subsection (c) below)		

(b) Where a noise study has been conducted and the noise mitigation measures recommended by that study have been made conditions of approval of a Major Use Permit, which authorizes the noise-generating use or activity and the decision making body approving the Major Use Permit determined that those mitigation measures reduce potential noise impacts to a level below significance, implementation and compliance with those noise mitigation measures shall constitute compliance with subsection (a) above.

(c) S88 zones are Specific Planning Areas which allow different uses. The sound level limits in Table 36.404 above that apply in an S88 zone depend on the use being made of the property. The limits in Table 36.404, subsection (1) apply to property with a residential, agricultural or civic use. The limits in subsection (3) apply to property with a commercial use. The limits in subsection (5) apply to property with an industrial use that would only be allowed in an M50, M52 or M54 zone. The limits in subsection (6) apply to all property with an extractive use or a use that would only be allowed in an M56 or M58 zone.

(d) If the measured ambient noise level exceeds the applicable limit in Table 36.404, the allowable one-hour average sound level shall be the one-hour average ambient noise level, plus three decibels. The ambient noise level shall be measured when the alleged noise violation source is not operating.

(e) The sound level limit at a location on a boundary between two zones is the arithmetic mean of the respective limits for the two zones. The one-hour average sound level limit applicable to extractive industries, however, including but not limited to borrow pits and mines, shall be 75 decibels at the property line regardless of the zone in which the extractive industry is located.

(f) A fixed-location public utility distribution or transmission facility located on or adjacent to a property line shall be subject to the sound level limits of this section measured at or beyond six feet from the boundary of the easement upon which the facility is located.

Section 3. Section 36.408 is amended to read as follows:

SEC. 36.408. Hours of Operation of Construction Equipment.

Except for emergency work, it shall be unlawful for any person to operate or cause to be operated, construction equipment:

(a) Between 7 p.m. and 7 a.m.

(b) On a Sunday or a holiday. For purposes of this section, a holiday means January 1st, the last Monday in May, July 4th, the first Monday in September, the fourth Thursday in November and December 25th and any day appointed by the President as a special national holiday or the Governor of the State as a special State holiday. A person may, however, operate construction equipment on a Sunday or holiday between the hours of 10 a.m. and 5 p.m. at the person's residence or for the purpose of constructing a residence for himself or herself, provided that the operation of construction equipment is not carried out for financial consideration or other consideration of any kind and does not violate the limitations in sections 36.409 and 36.410.

Section 4. Chapter 8 is added to Division 6 of Title 8 the San Diego County Code to read as follows:

Title 8: ZONING AND LAND USE REGULATIONS
Division 6: MISCELLANEOUS LAND USE REGULATIONS
Chapter 8: REASONABLE ACCOMMODATION

SEC. 86.801. Purpose.

This section provides a procedure to request reasonable accommodation for persons with disabilities seeking equal access to housing under the Federal Fair Housing Act and the California Fair Employment and Housing Act (the Acts) in the application of zoning laws and other land use regulations, policies and procedures.

SEC. 86.802. Applicability.

A request for reasonable accommodation may be made by any person with a disability, or by an entity acting on behalf of a person or persons with disabilities to provide or secure equal access to housing, when the application of a zoning regulation or other land use regulation, policy or practice acts as a barrier to fair housing opportunities. A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities; anyone who is regarded as having such impairment; or anyone who has a record of such impairment. This section is intended to apply to those persons who are defined as disabled under the Acts.

A request for reasonable accommodation may include a modification or exception to the rules, standards and practices for the siting, development and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability with equal opportunity to housing of their choice. Requests for reasonable accommodation shall be

made in the manner prescribed by Section 86.803. Nothing in this chapter shall relieve the requirement to obtain applicable building permits.

SEC. 86.803. Application requirements.

(a) Application. Requests for reasonable accommodation shall be submitted on an application form provided by Planning & Development Services, or in the form of a letter to the Director of Planning & Development Services, and shall contain the following information:

- (1) The applicant's name, address and telephone number;
- (2) The street address and assessor's parcel number of the property for which the request is being made;
- (3) The current actual use of the property;
- (4) The basis for the claim that the individual (or group of individuals, if application is made by an entity acting on behalf of a person or persons with disabilities) is considered disabled under the Acts;
- (5) The Zoning Ordinance regulation, provision or policy from which reasonable accommodation is being requested;
- (6) Why the requested accommodation is necessary to make the specific property accessible to the individual or group of individuals.

(b) Concurrent Review. If the project for which the request for reasonable accommodation is being made also requires some other discretionary approval, then the applicant may file the request concurrently with the application for discretionary approval.

SEC. 86.804. Review authority and procedure.

(a) Director. Requests for reasonable accommodation shall be reviewed by the Director of Planning & Development Services, or his/her designee, if no approval is sought other than the reasonable accommodation request. The Director or his/her designee shall make a written determination within forty-five (45) days and either grant, grant with modifications or deny a request for reasonable accommodation in accordance with Section 86.805. The Director's decision may be appealed to the Planning Commission pursuant to the Administrative Appeal Procedure of the Zoning Ordinance Section 7200 et seq.

(b) Other Review Authority. Requests for reasonable accommodation submitted for concurrent review with another discretionary land use application shall be reviewed by the authority reviewing the discretionary land use application. The applicable review authority shall make a written determination and either grant, grant with modifications or deny a request for reasonable accommodation in accordance with Section 86.805. An appeal of a decision shall be subject to the appeal provisions of the discretionary permit application in the applicable section of the Zoning Ordinance.

SEC. 86.805. Findings and decision.

(a) Findings. The written decision to grant, grant with modifications or deny a request for reasonable accommodation will be consistent with the Acts and shall be based on consideration of the following:

- (1) Whether the housing which is the subject of the request will be used by an individual or a group of individuals considered disabled under the Acts, and that the accommodation requested is necessary to make specific housing available to the individual or group of individuals with (a) disability(ies) under the Acts;
 - (2) Whether there are alternative reasonable accommodations available that would provide an equivalent level of benefit, or if alternative accommodations would be suitable based on the circumstances of this particular case;
 - (3) Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the county;
 - (4) Whether the requested reasonable accommodation would be consistent with the general plan land use designation of the property which is the subject of the reasonable accommodation request, and with the general purpose and intent in the applicable Zoning Use Regulations;
 - (5) Whether the requested reasonable accommodation substantially affects the physical attributes of the property.
- (b) Conditions of Approval. In granting a request for reasonable accommodation, the reviewing authority may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings required in Subsection (a) of this section.

SEC. 86.806. Appeal of determination.

A determination by the reviewing authority to grant, grant with modifications, or deny a request for reasonable accommodation may be appealed pursuant to Section 86.804 of this code.

Section 5. This ordinance shall take effect and be in force thirty days after its passage and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against it in the _____, a newspaper of general circulation published in the County of San Diego.