



STAFF REPORT

Date: December 17, 2014
To: Mayor and Members of City Council
From: William R. Galstan, Special Counsel *William R. Galstan*
Cc: Bryan Montgomery, City Manager; Troy Edgell, Code Enforcement Manager;
Dan Gomez, Chief of Police; Kevin Rohani, Public Works Director/City Engineer
Subject: Ordinance dealing with leaf blowers and other noises and blowing leaves into streets

FOR CONSIDERATION AT THE CITY COUNCIL MEETING ON JANUARY 13, 2015

Summary and Recommendation

Introduce the ordinance by title only and introduce the ordinance amending the Oakley Municipal Code.

Fiscal Impact

None. Possible very modest revenue from fines paid by violators.

Background and Analysis

The desire for an ordinance amendment sometimes occurs because of unusual circumstances. This is one of those cases.

Oakley residents have complained that a neighbor—apparently motivated by a desire to harass or spite—operates a power lawn mower and leaf blower late into the evening hours, not for gardening purposes but as a way of annoying the neighborhood.

We currently have an ordinance, OMC Sec. 4.2.208(c), that prohibits the operation of lawn mowers and leaf blowers between 10:00 p.m. and 8:00 a.m. After looking at this ordinance, there appears to be no legitimate reason to be operating such equipment at night. Thus the proposed ordinance would ban such operation between sunset and sunrise. These time parameters were chosen due to the changing light conditions during various seasons and daylight vs. standard time. Also, the term “dusk” is somewhat vague, whereas “sunset” and “sunrise” are easily determined by published times for those events each day.

While looking at the ordinance, it appeared that other changes would be desirable. For example, the existing ordinance prohibits the operation of air conditioning equipment or pool pumps between 10:00 p.m. and 8:00 a.m. As we know in East County, hot summer evenings can reasonably cause us to leave air conditioners on all night. By the same token, PG&E encourages the public to avoid using electrical appliances during the peak afternoon hours, thus leading pool owners to opt to start pool filtering around dawn rather than after 8:00. Thus the references to air conditioners and pool pumps are proposed to be eliminated.



Section 2 of the proposed ordinance deals with the practice of blowing leaves into the street. We have received complaints that some homeowners blow leaves into the street, rather than collecting them into a pile and placing them in the green waste container for pickup. While some larger cities like Sacramento encourage residents to place leaves into the gutter, whereupon city crews come along and pick them up, Oakley and most area cities do not provide this service. The leaves that nature drops on the streets is a sufficient problem by itself in terms of the potential for clogging storm drains that the additional burden of homeowner leaves being placed into the street is burdensome.

Oakley has an existing ordinance, called the "encroachment ordinance" that prohibits most private activities in the public streets and rights-of-way. Currently, it is unlawful to place "rubbish, brush, earth or material" in the right-of-way. This ordinance would clarify that it is unlawful to also place leaves into the street.

Attachments

- 1) Proposed ordinance amending OMC Sec. 4.2.208(c) and 6.2.102(c)(4).
- 2) Strike-out sheet showing proposed changes.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKLEY AMENDING
SECTIONS 4.2.208(c) and 6.2.102(c)(4) OF THE OAKLEY MUNICIPAL CODE,
DEALING WITH UNREASONABLE NOISES AND ENCROACHMENTS**

The City Council of the City of Oakley does ordain as follows:

Section 1. Section 4.2.208(c) of the Oakley Municipal Code is hereby amended to read as follows:

(c) Operate a lawn mower or leaf blower between sunset and sunrise, or operate other machinery between the hours of 10:00 p.m. and 7:00 a.m. in a manner causing excessive noise to nearby residents.

Section 2. Section 6.2.102(c)(4) is hereby amended to read as follows:

(c)(4) Placing or leaving on the right-of-way any rubbish, brush, leaves, earth or any material;

Section 3. California Environmental Quality Act (CEQA) Finding.

This ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), Review for Exemption, because it can be seen with certainty that the project will not have a significant effect on the environment; therefore the project is not subject to CEQA.

Section 4. Severability.

In the event any section or portion of this ordinance shall be determined to be invalid or unconstitutional, such section or portions shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

Section 5. Effective Date and Publication.

This ordinance shall take effect and be in force thirty (30) days from and after the date of its passage. The City Clerk shall cause the ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation, or by publishing a summary of the proposed ordinance, posting a certified copy of the proposed ordinance in the City Clerk's Office at least five (5) days prior to the City Council meeting at which the ordinance is to be adopted, and within fifteen (15) days after its adoption, publishing a summary of the ordinance with the names of the Council Members voting for and against the ordinance.

The foregoing ordinance was adopted with the reading waived at a regular meeting of the Oakley City Council on _____, 2015 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

Doug Hardcastle, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date

4.2.208 Prohibitions.

Except as otherwise provided in this article it is unlawful for a person to do any of the following acts:

a. Operate or play a radio, television set, stereo, phonograph, receiving set, tape or compact disk player, jukebox, musical instrument or similar device between 10:00 p.m. and 8:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from the building, structure or vehicle from which it is located or a distance of 50 feet from the device if outside;

b. Create noise on a street, sidewalk or public place adjacent to a school or church while in use or to a hospital if the noise unreasonably interferes with the working of the institution or the peace or quiet of a hospital patient;

c. Operate ~~a machinery, equipment, or a pump, fan, air conditioner, spa or pool equipment, power tool, lawn mower or leaf blower~~ between sunset and sunrise, or operate other machinery between the hours of 10:00 p.m. and 7:00 a.m. ~~or engine~~ in a manner which causes excessive noise to nearby residents. ~~between the hours of 10:00 p.m. and 8:00 a.m.~~

d. Operate or perform construction or repair work (which creates noise) within or adjacent to a residential land use district except during the following hours:

1) Monday through Friday: 7:30 a.m. to 7:00 p.m.

2) Saturdays, Sundays and holidays: 9:00 a.m. to 7:00 p.m.;

e. Install, use or operate a loudspeaker or sound-amplifying equipment in a fixed or movable position or mounted on a sound truck for the purpose of transmitting sound to a person in or on a street, sidewalk, park or public property without a permit obtained under Section 4.2.210.

6.2.102 Definitions.

As used in this chapter the following words and phrases shall have the meanings given in this section:

a. "Public highway" means the full width of the surfaced or traveled portion, including shoulders, of any road, street, path, lane, or alley dedicated to, reserved for, or used by or for the general public when those roads, streets, paths, lanes, and alleys have been accepted as and declared to be part of the City system of public highways, except highways forming a part of the State highway system or of an incorporated City street system.

b. "Right-of-way" means all land or interest therein which by deed, conveyance, agreement, easement, dedication, usage, or process of law is reserved for or dedicated to the use of the general public for road or highway purposes.

c. "Encroach" includes going on, over, or under, or using any right-of-way so as to prevent, obstruct, or interfere with the normal use of that way, including the performance of any of the following acts:

- 1) Excavating or disturbing the right-of-way;
- 2) Erecting or maintaining any post, sign, pole, fence, on, over, or under the right-of-way;
- 3) Planting any tree, shrub, grass, or other growing thing within the right-of-way;
- 4) Placing or leaving on the right-of-way any rubbish, brush, leaves, earth, or any material;
- 5) Constructing, placing, or maintaining on, over, under, or within the right-of-way any pathway, sidewalk, driveway, or other surfacing, any culvert or other surface drainage or subsurface drainage facility; or any pipe, conduit, or cable;
- 6) Traveling on the right-of-way by any vehicle or combination of vehicles or object of dimension, weight, or other characteristic prohibited by law without a permit;
- 7) Lighting or building a fire within the right-of-way;
- 8) Constructing, placing, planting, or maintaining any structure, embankment, excavation, tree, or other object adjacent to the right-of-way which causes or will cause an encroachment;

d. "Permittee" means any person, firm, company, corporation, association, public agency, or organization that proposes to do work or encroach on a right-of-way as defined in this section and has been issued a permit for encroachment by the City Engineer. All obligations, responsibilities, and other requirements of the permittee as described in this title shall be binding on subsequent owners of the encroachment.