

AGENDA ITEM REQUEST FORM

Department: City Council

Initiator: Councilmember Butt

Phone: 236-7435

Deadline for

Final decision: _____

For review: July 6, 2004

For meeting: July 6, 2004

AGENDA ITEM FOR:

City Council

Redevelopment Agency

Housing Authority

Surplus Property Authority

Jt. Powers Financing Authority

Other: _____

Public Hearing Item

Information Only

Contract/Agreement

Information Requested

Estimated

Resolution

Status Report

Presentation/

Ordinance

Public Comment Expected

Discussion

Grant Application

Time: _____

Retain Attachments For Meeting (If Checked)

ITEM/SUBJECT/TITLE

Consider amending Chapter 9.52, Community Noise Ordinance, to limit the use of train horns or whistles to situations where they are required by State or Federal law or authorized by the General Code of Operating Rules as the only method of warning non-railroad employees of emergencies, including persons on or near the tracks.

STAFF EXPLANATION OF ITEM

This item was reviewed and approved by the Public Services Public Safety Committee on June 24, 2004, with the provision that the text be revised, with the approval of the City Attorney's Office, to protect the City from potential liability related to risks of non-railroad employees.

The City Attorney's Office has reviewed and suggested the text that is incorporated into the attached draft.

STAFF RECOMMENDATION

Recommend approval

AGENDA ITEM NO: _____

9.52.040 Application.

(a) The provisions of this chapter shall apply generally to all property throughout the City wherein any of the conditions, hereinafter specified, are found to exist, except that the provisions of this chapter shall not apply to:

- 1) the emission of sound for the purpose of alerting persons to the existence of an emergency;
- 2) the emission of sound in the performance of emergency work; and
- 3) the emission of sound by warning devices necessary for the protection of public safety, as, for example, police, fire, ambulance, and hazardous materials emergency response sirens, and train horns **or whistles**.

Train horns or whistles shall be exempt only to the extent that state or federal law requires their use and such use is strictly limited to federal or state requirements, including, but not limited to, the sound level and the pattern or frequency of use. Train horns or whistles may also be used as required by the General Code of Operating Rules adopted by railroad operating companies with the provision that alternate means of signaling for movements within railroad rights of way or rail yards where storing, cleaning, maintaining, switching and linking and unlinking of engines and/or rail cars to each other takes place and where the general public is not routinely expected to be present, or when persons or livestock are on or near the track, are allowed by the General Code of Operating Rules, such alternate means shall be used.¹

(b) The provisions of this chapter are to be supplementary and complementary to all of the provisions of this Code, State law, and any law cognizable at common law or in equity, and nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the City of Richmond to abate any and all nuisances.

¹ The *General Code of Operating Rules*, which is neither State nor Federal law, but is a voluntary industry standard, can be found at <http://www.sdrm.org/faqs/rulebook/title.html>. Section 5.8.2, Sounding Whistle, can be found at <http://www.sdrm.org/faqs/rulebook/signals.html#5.8>. It includes signals for various train movements and notes that “The radio may be used in place of whistle signals, except signals (1) and (11).” Signal (1) is for “Use when an emergency exists, or persons or livestock are on the track. When crews on other trains hear this signal, they must stop until it is safe to proceed.” Signal (11) is for “Approaching public crossings at grade with engine in front, start signal not less than ¼ mile before reaching crossing, if distance permits. If distance does not permit, start signal soon enough before the crossing to provide warning. Prolong or repeat signal until engine occupies the crossing. Use this signal to warn employees when view is restricted.” Signal (11) does not apply because both State requires signaling at grade crossings and Federal law will supersede State law on December 18, 2004 (see <http://www.fra.dot.gov/Content3.asp?P=1318>).