

DRAFT

Kensington Municipal Advisory Council  
Minutes  
Meeting of March 30, 2004

Council Members present:

Chair: Reyes Barraza

Vice Chair: Jim Carman

Secretary: Richard Karlsson

Council Member: Kay Reed

Council Member: Patrick Tahara

1. The meeting commenced at 7:00pm, all members were present.
2. *The Council approved the minutes of February 24, 2004. The minutes were approved 5-0.*
3. **308 Rugby Ave. (LP042015). Request for Home Occupation Use Permit.** The person applying for the permit, Dave Stites, appeared and testified at the hearing. Mr. Stites stated that his business, which is to convert audio tape to cd and videotapes to dvd is primarily a website business. He further testified that that he goes back and forth to the post office or Fed Ex or other delivery or pick-up business so that there would be no increased traffic as a result of this business. He also stated that there are no employees of the business that would be coming and going to and from the house, other than his family members who reside in the home and occasionally assist him in this business. Mr. Stites rents the property at 308 Rugby Ave. and is only interested in the permit for the period that he occupies the premises. No additional noise would result as he uses headphones to ensure the quality of the sound.

No one spoke in opposition to the Home Occupation Use Permit.

*Mr. Carman made a motion to recommend approval of the permit on the following conditions: 1. The uses granted under the permit be limited to those described by Mr. Stites in his testimony, and stated in his application for the permit, dated February 28, 2004, and, 2. That the use permit only be granted for the term that Mr. Stites is a resident at 308 Rugby Ave. The motion was passed 5-0.*

4. **Discussion of the proposed Noise Ordinance for the Kensington area.**

Vice Chair Carman opened the discussion by stating that revisions had been made to portions of the Noise Ordinance based upon the State Model Ordinance. Concerns remained over whether decibel levels should be included to define a "noise disturbance" within the proposed ordinance, but Mr. Carman was leaving discretion to the Chief of Police as to whether he believed it could be enforced without including decibel levels.

*At this point it was Mr. Carman's moved that the current version be sent to the Chief of Police for comment and the Kensington Service District (KSD) and, if it received approval, then to Supervisor Gioia to review and forward to County Counsel.*

Member Kay Reed wondered why there were different hours for different types of activities and questioned if the ordinance would not be easier to enforce within the same hourly restrictions. She also had questions regarding whether some activities that did not generate noise might be unlawful, as the "specific prohibited acts" were defined by the hours of operation, rather than the amount of noise that they might cause. Secretary Karlsson proposed adding "which generate a noise disturbance" after the word "activities" in the first paragraph under "**Specific Prohibited Acts**" which was adopted as a recommendation by KMAC.

Member Tahara questioned whether such an ordinance was needed given existing laws regarding nuisance and disturbing the peace. Vice Chair Carman indicated that that these general penal code provisions were not applicable to the concerns raised by the Coventry Neighborhood Association (CNA) and that is why it was recommended that there concern be addressed by a noise ordinance.

Andrew Reed, a member of the Community raised questions regarding noise during construction, noise that in his experience would go on for weeks. While this issue is normally addressed in the construction permit, the Kensington police have advised Mr. Reed that they are not routinely provided with copies of the construction permit. It was therefore suggested that the existing language of the proposed ordinance be modified to address this issue. The modification was to section 8, of the "**Specific Prohibited Acts**" and that was to delete the phrase "meet and confer" after "sponsor" and to rewrite the remainder of the sentence, after the word "Department" to provide "... with a copy of the applicable building/construction permit and construction schedule which shall designate appropriate methods to minimize construction noise impacts and that is in conformance with the requirements of this section. Sponsor shall comply with the requirements of the issued permit." Mr. Reed then asked whether an ordinance might drafted without decibel levels to best address to the issue of ambient noises in the Kensington neighborhood and then a more specific section be drafted to address the concerns of the CNA

This prompted a broader discussion on the issue of requiring a permit for the activity that concerns the CNA. Ms. Folger-Brown indicated that she believed that the ordinance would not address this issue without a decibel definition of a noise disturbance. She also mentioned that a permit system would seem to address this issue but she had been advised that the County seemed uninterested in addressing this problem via a permit process. Furthermore, Senator Perata had sponsored legislation that would effectively preclude a permit requirement where the activity was in support of a charitable purpose. Vice Chair Carman agreed with her impression and, while recognizing that a permit was one approach to the problem, in his view this approach was not endorsed by the Chief of Police or by the County. Therefore the Noise Ordinance was the best alternative available.

Mr. Jack Walker commented on whether the noise ordinance addressed the issue of amplified sound and was advised that it did in sections 1 and 5 under prohibited noises.

Mr. Carman then addressed a question to Ms. Joan Gallegos as to whether the KCSD was willing to entertain his earlier motion and that the proposed Noise Ordinance move from the jurisdiction of KMAC to KCSD and eventually Supervisor Gioia. She indicated, informally, that seemed an appropriate progression for the proposed ordinance.

*Vice Chair Carman's motion was thereafter adopted by a 5-0 vote.*

## **5. Citizen Comments.**

At the request of the Chair, citizen comments were delayed until this point in the meeting in order to convenience a citizen who wished to address the Council. The owner of the property at 300 Coventry, Rob Darakhshen, appeared and requested information regarding the hearing process before a Zoning Administrator. KMAC advised Mr. Darakhshen of the process and that the Chair would be present to explain the basis for its recommendation

## **6. Procedural Matters.**

Chair Barraza recommended to the KMAC Board that a telephone answering service be obtained to field the many phone calls from residents about matters before KMAC. All members believed that this was a good idea for the reasons initially suggested by Chair Barraza. Chair Barraza offered to pay for this service personally, but the Board believed this was an appropriate community service and should be covered out of the existing budget, or that additional funds could be requested from KIC and KPOA. Gloria Morrison spoke in favor of funding by the two volunteer organizations. All agreed that if such a telephone answering service were obtained, steps would be taken to ensure that the calls were answered reasonably soon after they were received.

*A motion in support of Chair Barraza's recommendation was adopted 5-0.*

## **7. Information Reports.**

a. Concerns were expressed that applications were being received at a rapid pace for additions that might be precluded under the pending "view" ordinance. Discussion followed regarding obtaining community support for funding such an ordinance.

b. Discussion regarding when a fence exceeded the 6' requirement, if the fence sat atop a retaining wall, thereby increasing the effective height of the fence. Chair Barraza indicated that he would review the Code provisions and speak to the enforcement officer.

c. Tree Houses: Topic concerned when a tree house effectively became a "structure" under the County building ordinances and thereby would need a permit. In this instance, the tree house impacted the privacy concerns of the next door neighbor. Chair Carman indicated that he would look into this issue further.

d. 2004 Brown Act refresher training. The County has provided packets to at least some of the KMAC members regarding changes to the Brown Act, as well as a synopsis of the more important provisions. The Chair made sure all member of the Council were familiar with these recent changes.

e. Freeport Regional Water Project EIR. Chair Barraza asked if any discussion of the EBMUD Freeport Regional Water Project EIR was required. Vice Chair Carman indicated that he had received a copy of same mailing but it was his impression that it was not applicable to KMAC. That view was unanimous.

8. At 9:35 p.m. the meeting was adjourned.

Richard Karlsson  
Secretary