



ASSOCIATED GENERAL CONTRACTORS of ALASKA **2006 AGC “Chapter of the Year”**

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September 27, 2007

Assemblyman Dan Sullivan
Assemblyman Matt Claman
Municipality of Anchorage
Anchorage, Alaska

Re: Revisions to Anchorage Municipal Code 15.70

Dear Assemblymen:

The Associated Contractors of Alaska (AGC) is pleased to provide comments on the proposed revisions to the Municipality of Anchorage Noise Ordinance. The draft before you is the result of many revisions and compromises on the part of all parties. The staff of the Municipality is to be commended for their efforts to satisfy the concerns of all the parties. However, AGC believes that the current draft is still fatally flawed in a number of ways.

1. 15.70.030 Definitions

Offsite fabrication and asphalt or gravel operations are not considered construction under the theory that these activities are performed at a site for an indefinite term while construction activities are undertaken for a finite period. This theory ignores the fact that many of these activities are performed only during the construction season and their locations are essentially closed when the construction season ends. AGC believes that these activities should be considered construction when they exist solely to support construction activities undertaken during the construction season. The MOA theory has credibility when only when an activity is engaged in continuously for numerous, unspecified customers.

If the MOA definition is sustained, the cost of construction in Anchorage will increase substantially. The restricted definition would require that these activities be regulated under the Table 1 noise limits rather than as construction related work allowed under 15.70.060 (B) (3). That would mean that these activities would not be able to utilize the limits established for the construction even though the activities exist solely for construction thereby reducing the ability to work at night consequently lengthening the construction period and forcing construction vehicles on the road system during the normal daytime traffic. AGC would recommend that this definition be modified to reflect the true nature of construction activities.

2. 15.70.040 (B) (new 5) - Powers and duties of department of health and human services

It is the understanding of AGC that the activities set forth in 15.070. (B) 4, 6, and 8 of the existing ordinance has been ignored by the department and all of them should either be eliminated in their entirety or performed as required by the ordinance. Instead the department has proposed that they provide a long term plan to achieve quiet in the MOA. AGC would recommend that either section 5 in the proposed ordinance also be eliminated or sections 4, 6, and 8 from the current ordinance should be included.

3. 15.70.060 (B) (3) (a) – Construction

The department introduces the term “creates a noise disturbance across a residential real property boundary” without defining what creates a noise disturbance. It would seem that a noise disturbance does not exist if it is within the limits established in Table 1. Since the numerical limits of Table 1 apply, it would seem that there is no need to reference a noise disturbance.

4. 15.70.060 (B) (19) - Vibration

The term “vibration perception threshold” is not defined. In the context of this section, the definition has important implications and should be clearly defined. This section creates a new and separate noise level with respect to audible sounds, in addition to noise emission standards, and sound level limits as measured by decibels, which are otherwise applicable to audible sounds. Under this new section, sounds which do not exceed allowable limits as measured by decibels may nevertheless violate the ordinance if any person has a "perception" of vibration that accompanies the otherwise non-offending sound. That is harsh, ambiguous, subjective and difficult to enforce.

5. 15.70.070 (A) Generally

The revision adds the activity of street sweeping to the list of activities that require a noise permit. To be effective, street sweeping must take place when the fewest vehicles are on streets or in parking lots. Therefore this activity must, of necessity, occur at night. AGC would recommend that this activity, as well as snow removal which also faces similar constraints, should be allowed to operate at night within set parameters.

6. 15.70.070 (C) - Criteria for Approval

Prior to this proposed revision applicants for noise permits were required to meet one of the four criteria. The proposed modification requires an applicant to meet all four criteria. This modification appears to put another burden on an applicant with all the attendant costs associated with that burden, without identifying a problem or exploring alternative measures for resolution. AGC recommends that the language in the existing ordinance be maintained.

7. 15.70.075 – Measuring Sound Levels

It is useful to have the procedures for measuring noise in the ordinance, but it should be equally complete and comprehensive as in the replaced section in the current ordinance. AGC recommends that this section be expanded to include the omitted sections from the current ordinance.

8. 15.70.080 (A) – Property line noise emission standards

The revision adds public property to the list covered by this section. Once again the department fails to realize the inconvenience to residents created when property is not cleared of snow or cleaned of dirt and debris. As indicated above, snow removal and street sweeping are normal, predictable activities and the ordinance should establish parameters for their operations. AGC would recommend that unless the intent of this change is to increase revenues through the proposed fees, these activities should not be required to get permits.

9. 15.70.080 - Table 1

Table 1 has added the phrase “Lmax” to the sound level limit thereby establishing numerical limits that are instantaneous momentary maximums, not any sort of average or time-related quantity. The department has essentially ignored the substantial body of technical information that was provided regarding Leq or other methods of averaging and has further ignored information indicating that the Lmax limits should be at least 10 decibels higher than the values shown. Utilizing the Lmax standard creates situations where an isolated incident, no matter how short in duration, could cause a violation of this ordinance. Utilizing the Leq method of measuring noise recognizes that isolated events do occur but averages the sounds over a period of time. Under the Leq standard violations would only occur if the average for a period of time exceeds the established limits.

In addition, Table 1 is provided to circumvent the problems associated with the concept of utilizing arithmetic means for adjacent parcels with different zoning. Rather than utilizing the simple mean between the properties, the department has arbitrarily reduced the limits that may occur at the residential property lines.

AGC recommends that table 1 be based on Leq and the limits represent the true arithmetic means between properties as all other ordinances in the United States employing the term “arithmetic mean” do.

10. 15.70.110 (A) (B) – Penalties and remedies other than motor vehicles

This section seems punitive in that it is open ended and theoretically would allow the department to pass on normal costs of operation as penalties. To be fair, should the department also seek money from citizens that file unfounded claims? These unfounded claims cost both the department and the impacted businesses money and time. If it is deemed that a penalty is appropriate for a violation to this ordinance, the amount of the penalty should be clearly defined and identified. The department should not be given a license to balance their budget by such charges. AGC recommends that this section be reconsidered and modified appropriately.

Thank you for giving AGC the opportunity to provide input on the proposed revisions to the ordinance.

Sincerely,



Richard Cattnach
Executive Director