



## ASSOCIATED GENERAL CONTRACTORS of ALASKA

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May 29, 2006

Mr. Denis LaBlanc  
City Manager  
632 W. Sixth Avenue,  
Anchorage, AK 99501

Via Email

Subject: Noise Ordinance Revisions

Dear Denis:

On behalf of the Associated General Contractors of Alaska I would like to thank you for meeting with the AGC taskforce on the proposed modifications to the Municipality's noise ordinance. As you no doubt understand, these proposed modifications concern many AGC members and the meeting provided a useful venue to understand the motivation for the suggested changes.

### AGC's Analysis of the proposed changes

To summarize, AGC understands that the proposed changes will:

- significantly tighten the allowable noise levels produced by construction sites
- essentially prohibit most construction work and related activities on Sundays and holidays
- define supporting activities as construction, subject to the new noise limits

Based on our analysis, the taskforce has determined that these changes will have a significant impact upon our members and their normal execution of construction projects.

Since there are lingering technical issues with the current ordinance, and the city is currently contemplating changes, AGC believes that this would be a great opportunity to correct the problems. With this in mind, AGC suggests modifications to the noise ordinance that will make it clearer to interpret and

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easier to enforce, and would be on par with typical ordinances nationwide. In the end, everyone will benefit.

The modifications listed below also address many of the current construction noise complaints, and protect the public in a manner consistent with other noise codes nationwide.

Table 1 noise limits should be defined as Leq values, not momentary noise levels.

The noise level standards contained in Table 1 (15.70.080) are not defined in terms of what metric (Lmax, Leq, L10, etc) shall be used as a standard for noise measurements. The absence of a clear definition is a major technical flaw in the ordinance.

The municipal health department currently uses momentary maximum noise levels when determining compliance. The use of Lmax (momentary maximum) standards is considerably more restrictive than using the Leq (average) value. The numerical limits contained in Table 1 are derived from Leq-based model noise ordinances, plus a great deal of enforcement experience and litigation.

Using Lmax, a noise exceeding the numerical threshold for even one second per day would be in violation, whether or not any receiver was actually impacted. In fact, many ordinary activities such as mowing a lawn or blowing snow from a driveway are illegal within the municipality, based on momentary noise levels. Mowing a lawn would create noise in excess of the daytime residential limit at your neighbor, but only for a few minutes. That violates a momentary noise limit, but would comply with an hourly Leq limit, because the noise does not last very long.

Noise limits expressed as Leq values would be ordinary and typical of most noise ordinances from around the country. In our opinion, the numerical limits from Table 1 are intended to be Leq values.

Using the Lmax as the statutory limit would be very unusual. AGC cannot locate any other jurisdiction's noise ordinance that relies solely upon momentary Lmax noise limits, and certainly not with these relatively low numerical values.

Leq is already defined as a quantity in the glossary section of AMC 15.70, and is used for construction noise (15.70.060 section 3), but is not used otherwise in the numerical limits. That is a curious omission.

Most noise ordinances nationwide use Leq as the measure of noise. The ordinance defines the applicable measurement conditions, and the associated

numerical values for allowable noise. It is very unusual for an ordinance to use momentary maximum values for noise regulation.

15.70 Paragraph B should remain, but must be clarified to specify an arithmetic average between a *noise source* and a *single receiving land use*.

Section 15.70 Paragraph B allows for averaging the noise limits between different adjoining land uses. This section is scheduled for deletion, as part of the proposed changes.

The averaging clause is quite common in noise ordinances, and serves to mediate between adjoining land uses. This is particularly true when a more sensitive land use (residential) is developed alongside pre-existing industrial or commercial activities.

The current language of paragraph B is both vague and poorly defined. The municipality has taken the interpretation that the averaging process applies to two adjoining receivers, not between a noise source and a receiver. That is inconsistent with the normal application and interpretation of averaging clauses around the country. The municipality's interpretation is very unusual, confusing, and produces inconsistent results.

In our opinion, the intent of paragraph B is for simple averaging of the allowable limits between two adjoining land uses, directly between source and the receiver. For example, a commercial property has a maximum limit of 70 dBA during the daytime, per Table 1. A residential property has a daytime noise limit of 60 dBA. For residential property adjacent to commercial property, the modified limit would be 65 dBA for noise affecting the residential property. I believe that is both the intent and proper interpretation of Paragraph B.

Averaging is a common clause appearing in many noise ordinances around the country. It reflects the real world case where more noise sensitive projects are approved next door to pre-existing activities. A great deal of research and experience has shown that "splitting the difference" is a reasonable and fair thing to do. It does not unduly punish the pre-existing land use nor does it leave the new land use completely unprotected. It is a reasonable compromise.

"Noise disturbance" language should be removed.

Proposed sections 3.B.a.vi and 3.B.b.vi both contain the phrase, "...causes a noise disturbance at any time...." This is an extremely restrictive limit. On this basis, one complaint from any nearby neighbor would shut down virtually any project, even if it complied with the numerical noise limitations. Current language

on the noise permits specifically states that the permit can be revoked at any time, for any noise complaint.

It is standard practice and policy with most jurisdictions (and has generally been held in court) that the numerical limits and clauses contained in a noise ordinance will determine and define what that community considers to be "reasonable" noise. If the numerical limits and supporting conditions are met, you are in compliance with the ordinance. Noise ordinances form the local definition of "reasonable". They are not intended to prevent all noise complaints, nor can they satisfy everyone in the community.

Nuisance ordinances are the most difficult to defend in court, and are the most prone to subjective interpretation and selective enforcement.

These "noise disturbance" clauses should be deleted throughout the language of the ordinance. The numerical limits of Table 1, along with the other conditions contained in different sections of the ordinance, will adequately regulate noise within the municipality.

The noise ordinance should have language protecting pre-existing land uses and activities.

It has become increasingly common for new noise-sensitive projects to be approved next to existing noisy businesses and activities. A classic example is a new residential neighborhood built next to an airport that has been there for decades. Then the new residents complain about aircraft noise. In a perfect world, land use planning and zoning tools would prevent incompatible land uses from developing too close to each other, avoiding the conflict.

Pre-existing land uses should be "grand fathered" or otherwise protected from retroactive noise regulation that significantly changes the regulations affecting their operating conditions after the fact. In most jurisdictions, this works quite well, and it works both ways.

A recent local case involves an automotive race track built very close to pre-existing homes. The new race track created noise levels far above any codified residential noise limit, and were ultimately deemed unreasonable. Conversely, had the race track been there first and the adjoining homes were built later, they would have less claim to being impacted by noise.

Some jurisdictions reserve the caveat that any significant future expansion or major changes to the pre-existing activity would need to be studied, to verify that the new noise level would be reasonable and in compliance. That is most often handled by a conditional use permit process.

Both parties deserve reasonable noise regulation. Most communities favor the pre-existing land use, and place the burden of noise control on the new development. The proposed changes contained in AO 2006-60 would do the opposite, placing considerably stricter retroactive noise limits on long standing land uses.

In analyzing the proposed noise ordinance, the AGC taskforce agreed with the conclusion that modifications were necessary, but disagrees with those suggested. Instead, we believe that the modifications we suggest will help bring the ordinance more in line with noise ordinances in other communities and help define the standards for all parties.

We look forward to discussing our suggestions with you should you desire.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Cattnach".

Richard Cattnach  
Executive Director