



ASSOCIATED GENERAL CONTRACTORS of ALASKA

8005 SCHOON STREET, SUITE 100 • ANCHORAGE, ALASKA 99518
TELEPHONE (907) 561-5354 • FAX (907) 562-6118

December 15, 2006

Mr. Chris Tofteberg
Food Safety & Sanitation Program Manager
Health and Human Services
825 L. Street
Anchorage, AK 99501

Subject: Noise Ordinance Revisions

Dear Chris:

On behalf of the Associated General Contractors of Alaska I would like to thank you holding the series of meetings on the Municipality's noise ordinance and seeking information on how the ordinance can be modified to deal with the problems facing residents and businesses in 2006 and beyond. As you no doubt understand, many of the proposed modifications concern AGC members but the construction industry realizes that such meetings are necessary to understand the issues facing all the parties.

Since there are lingering technical issues with the current ordinance, 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 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.

FAIRBANKS
P.O. BOX 6005 • FAIRBANKS, AK 99706
TELEPHONE (907) 452-1809

(1) 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, consistent definition is a major technical flaw in the current ordinance.

In determining compliance with the ordinance, the municipal health department currently uses momentary maximum noise levels. 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 leaves from a driveway exceed the existing threshold, 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.

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.

(2) 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 requires for averaging the noise limits between different adjoining land uses. 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, since each property is simultaneously a noise source and a 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. AGC believes 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.

(3) Noise Permits

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. 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.

(4) 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 "grandfathered" 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.

(5) Definition of Construction

The current definition of construction excludes demolition as part of construction. Unfortunately as Anchorage grows and the amount of available land diminishes, existing facilities must be demolished before the new construction can proceed. Eliminating demolition from the definition means that the demolition portion of the project is subject to the noise limits in place for the existing land use. This exclusion seems illogical as Anchorage grows and matures.

Similarly the Municipality defines construction in a manner that is site specific or time specific. Anything that does not fit within those site or time constraints is considered manufacturing and therefore not eligible for a noise permit. While this definition helps solve a particular problem, it creates others which might have serious implications. This definition would mean that a permanent asphalt plant that exists solely to supply asphalt to multiple projects in various locations might not be able to meet a project schedule because of noise limits. Unfortunately it also means that a more inefficient, noisier portable batch plant could be located at the job site in a residential area and benefit from a noise permit thereby working extended hours. Likewise this definition could have the impact of forcing more gravel and asphalt trucks on the road during the day thereby increasing traffic congestion and public frustration and drive up project costs.

In analyzing the current noise ordinance, the AGC taskforce agrees with the conclusion that modifications are necessary. 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". The signature is fluid and cursive, with a long horizontal stroke at the end.

Richard Cattnach
Executive Director