

Below is a draft City Neighborhood Council letter for discussion by the district councils and at the June 23 CNC meeting. Also, as there is a possibility that the City Council may vote on the noise ordinance changes prior to the July 28 CNC meeting, CNC may wish to consider authorizing the letter at its June 23 meeting. Comments on the draft letter and on the schedule are welcome, to CNC Chair Chris Leman, cleman@oo.net, (206) 322-5463.

xxxx, 2008

Mayor Greg Nickels
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Seattle, WA 98124-4749

Seattle City Council
City Hall, 600 4th Avenue, 2nd floor
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RE: PROPOSED REVISIONS TO NOISE ORDINANCE

Dear Mayor Nickels and City Councilmembers:

The noise ordinance (SMC 25.08.010) commits the City to “minimize the exposure of citizens to the physiological and psychological dangers of excessive noise and to protect, promote and preserve the public health, safety and welfare,” and to “control the level of noise in a manner which promotes commerce; the use, value and enjoyment of property; sleep and repose; and the quality of the environment.”

Some changes recently proposed by the Department of Planning and Development and the City Council’s Transportation Committee will improve the noise ordinance, but the City Neighborhood Council is opposed to other major changes that would weaken the ordinance, especially by increasing nighttime construction hours and noise levels.

Do make these improvements. Enforcement of the noise ordinance is always a challenge, and we support the addition of civil penalties and the ability of DPD to issue citations, to issue stop-work orders, and to revoke a noise variance that it has previously granted. We also support the proposed change in residential areas to prohibit late evening noise such as from earthmoving and log chippers without a variance.

Do not eliminate the required public hearing regarding proposed variances. DPD and the Council committee would repeal the noise ordinance's current requirement that DPD hold a "public hearing on due notice" for any proposed variance from the noise ordinance's requirements. A public hearing should continue to be required, and the proposed substitute of "an opportunity for public comment" is not sufficient.

Do not eliminate the right to appeal temporary variances. DPD and the Council committee would eliminate the current right to appeal temporary two-week variances. DPD routinely issues many such variances in succession to the same applicant, including to commercial projects that would not be covered by the proposed new variance for public projects. Removing the right to appeal these decisions would leave the public with no check on DPD's power. The possibility of appeal helps keep the variances reasonable, and while appeals are rare, they provide a mid-course correction if DPD has issued the variances too easily or without needed conditions.

Do not adopt the proposed "major public project construction" variance without significant improvements. DPD and the Council committee recommend for the ordinance the creation of a new variance for "major public projects" that for an initial year and then for an unlimited period or years would allow these projects to exceed the ordinance's limits on the how loud and when noise would be allowed. In particular, the new variance would be used to allow loud noise at night. The effort is to give public projects special treatment because, in DPD's words, they "are intended to serve broad public interests."

The noise from a public project is just as disturbing and unhealthful to the public as is noise from any other source. The noise ordinance was passed many decades ago, and ever since, it has not been a barrier to the successful and economical construction of public projects. If a public construction project now needs a variance from the noise ordinance, it applies for one just like any other applicant. The proposed special variance for major public construction projects removes the public's protections that are in the current variance process..

How can the noise ordinance be taken seriously if government begins to regulate its own noise less than other sources of noise? The pressure will start immediately to change the noise ordinance also to give special treatment to private construction projects. Do not start on this slippery slope! Please public construction the same as other sources of noise.

We oppose further consideration of the proposed variance for major public projects unless the following changes are made. :

(1) One or possibly two years should be the minimum length for a project that would qualify for this proposed new variance. As currently proposed, a major public project would be defined as one that is “likely to be of at least six months duration.” Because of the many stages of a project, far too many projects would be eligible under this definition.

(2) Variances should be issuable only site-by-site. The current proposal is to issue a single variance for an entire project (e.g. all light rail construction throughout the City) that would encompass sites that are far apart and have far different conditions for construction and its noise impacts. Each variance should be carefully tailored and conditions to each site.

(3) The proposed variance for major public construction should be for a term of no more than six months. The current proposal is for an initial term of one year, and once renewed, there would be no term at all—the variance could extend for years until the project is completed.

(4) The proposal would not give the public the right to appeal a DPD decision to amend an existing noise variance, such as for a change in construction practices. Changes in construction practices can greatly increase the volume, location, and time of noise, and such changes in any variance should be appealable.

(5) Fines for violation of the proposed major public project construction variance should be very high. As currently proposed, they would be too low to be effective--in fact lower than those that the Council recently adopted for the nightlife portions of the same ordinance! It seems doubtful that an agency like WSDOT or Sound Transit would be deterred by a fine that was lower than that faced by an individual tavern owner.

Need for public outreach. DPD did no discernible public outreach on these proposals before presenting them to the City Council on April 16. With an issue like this which affects people’s health and their ability to live in the city, and which departs so significantly from current practice, it is essential for the City Council to ensure widespread public notice, discussion, and the opportunity to comment. We suggest that the Council send the matter back, requesting that DPD conduct a series of public meetings, that it request and consider public comments, and that it send the proposal to those who have commented to DPD in the past on noise from major public construction projects.

Conclusion. Thanks for your consideration of the above recommendations. This letter was distributed in draft to the district councils and revised and adopted at the xxx, 2008 City Neighborhood Council meeting.

Sincerely,

Chris Leman
Chair, CNC

cc: District Councils
City Councilmembers