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Diane Sugimura, Director

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DR 3-2009, Variances from the Standards of the Noise Control Code, SMC 25.08

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DPD**Director's Rule 3-2009**

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Subject: Variances from the Standards of the Noise Control Code, SMC 25.08	Code and Section Reference: SMC 25.08.560-25.08.960	
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	Ordinance Authority: SMC 3.06.040	
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BACKGROUND:

Pursuant to City of Seattle Municipal Code (SMC) Chapter 25.08, it is the responsibility of the City of Seattle Department of Planning and Development (DPD) to promulgate rules and regulations governing the application for and granting of noise variances.

Contents of this Rule

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- I. Administrator's authority to grant or deny a temporary noise variance

Types of Variances

General exterior sound level limits are established in SMC 25.08.410. SMC 25.08.420 and SMC 25.08.425 provide different limits for sounds at night and for sounds created by construction and maintenance equipment. In addition, SMC 25.08.560-655 authorizes the DPD Director (called the "Administrator" in SMC Chapter 25.08) to grant the following types of variances from these limits after the Director has considered the relative interests of those who are likely to be affected by the noise, including the applicant, property owners, and the general public:

Temporary Variance. A temporary variance grants permission to vary from the limits of the noise control code for periods not to exceed 14 days. This type of variance may be granted for any activity, use, process or equipment if the Administrator concludes that the subsequent noise would not annoy a substantial number of people, would not endanger public health or safety, and that a temporary variance is more appropriate than a technical, economic or major public project construction variance.

Technical Variance. A technical variance grants permission to vary from the limits of the noise control code for periods of time determined by the Administrator. This type of variance may be granted for situations where noise must unavoidably occur but there are no practical means known or available for the adequate prevention, abatement or control of the noise involved and if the Administrator concludes that the subsequent noise would not endanger public health or safety.

Economic Variance. An economic variance grants permission to vary from the limits of the noise control code where measures to reduce such noisy activities may be taken but because of their extent or cost must be spread over a period of time. The duration of an economic variance will be for a period not to exceed such reasonable time as is required in the view of the Administrator for the taking of the necessary measure. The Administrator must conclude that the noise would not endanger public health or safety.

Major Public Project Construction (MPPC) Variance. A major public project construction variance may be granted by the Administrator for projects with the following characteristics:

- The construction project is for a public facility as defined in the Land Use Code (SMC chapter 23.84A);
- The construction project will have a duration of at least six months; and
- The construction project will have a substantial impact on the provision of public services (such as transportation) and public health, safety and welfare.

In deciding whether a proposal is eligible for a MPPC Variance, factors considered by the Administrator will include:

- Expected size, duration, complexity or cost of construction; and
- Magnitude of the expected impacts on traffic and transportation; and/or
- Degree of impact on the provision of public services during construction.

SECTION A. Application requirements

All variance types are subject to this section of the rule.

Temporary Variance Applications

Applicants may request a temporary variance by submitting an application, which is available from the DPD Noise Abatement Program Office (22nd floor of Seattle Municipal Tower, 700 Fifth Avenue), and at the webpage "www.seattle.gov/dpd/Enforcement/Noise_Abatement/Apply_for_a_Noise_Variance/default.asp".

Economic, Technical and Major Public Project Construction Variance Applications

To apply for one of these variances, contact a Noise Abatement Coordinator to learn what is required (for telephone and email contact information, please visit "www.seattle.gov/dpd/Enforcement/Noise_Abatement/Overview/").

RULES:

1. For all variances, the application materials shall at a minimum identify:
 - a. The type of variance sought;
 - b. The provisions from which a variance is being sought;
 - c. The period of time and reasons for which the variance is sought;
 - d. Information about current noise control technologies and their probable levels of effectiveness in noise mitigation; and
 - e. A Noise Management and Mitigation Plan (NMMP), the contents of which are described in Section B of this Rule.
2. The Administrator may require other materials to identify the appropriate type of variance, assess noise impacts and identify mitigation necessary to meet the intent and purpose of the noise control code.
3. For technical variance applications, an applicant shall provide information to support a conclusion that there are no other practical means known or available for the adequate prevention, abatement or control of the noise involved.
4. For economic variance applications, an applicant shall provide information describing why this type of variance is needed, including why noise-reducing measures must be spread over a period of time, due to their extent or cost, a proposed timetable for carrying out noise-reducing measures in an

expeditious manner, and why this timeframe is the minimum necessary to carry out the necessary measures. The information shall be detailed enough that the Noise Abatement Coordinator can condition the variance on compliance with a timetable.

SECTION B. Noise Management and Mitigation Plan (NMMP)

All variance types are subject to this section of the rule.

In approving a variance, the Administrator shall determine that any accompanying NMMP is adequate to mitigate the noise impacts of the proposed activity. Compliance with the NMMP approved by the Administrator is a condition of every variance. Required contents of a NMMP (SMC 25.08.590.D) are as follows:

1. *A description of the exterior sound level limits expected to be exceeded, estimates of the amount(s) by which these levels are expected to be exceeded and by what equipment, the exterior sound level limits that will be in effect during the variance, the time periods during which the pre-variance exterior sound level limits may be exceeded, and the expected sources of the sound during each of the time periods (e.g., types of equipment or activity causing the exterior sound level limits to be exceeded);**
2. *Measures and provisions to be taken to avoid exceeding the exterior sound level limits;*
3. *Provisions to mitigate sounds that exceed the exterior sound level limits and that cannot otherwise be avoided; and*
4. *A process for informing the public in the affected areas about the provisions of the variance.*

* The terms "exterior sound level limits" and "pre-variance exterior sound level limits" both refer to the limits in Section 25.08.410 as modified by 25.08.420 and 25.08.425. The term "exterior sound level limits that will be in effect during the variance" refers to limits proposed in the NMMP.

RULES:

1. The Administrator may require that the NMMP include monitoring and reporting to verify that the NMMP and any variance conditions are being met. If monitoring and reporting is required, the applicant must submit a proposed reporting schedule. See Section C for more on monitoring.
2. The NMMP shall specify the public outreach methods to be used as part of its "process for informing the public in the affected areas about the provisions of the variance." See Section D for more on public notice and comment.

3. If the monitoring reports indicate that the noise mitigation measures are not working as expected to mitigate the noise, DPD Noise Abatement Coordinators will work with the applicant and/or its agents or employees to recommend additional or modified mitigation measures. The applicant may be required to make reasonable changes or add mitigation measures to the NMMP.
4. The Administrator may require, as part of NMMP conditions, that monitoring equipment be installed to monitor performance. If noise monitoring equipment is required by the NMMP, the applicant shall provide City Noise Abatement Coordinators and the applicant's monitor with physical and/or electronic access to the monitoring equipment at all times, particularly if the equipment is in a secured location.

SECTION C. Monitoring and reporting

All variance approvals that include a requirement for monitoring and reporting are subject to this section of the rule.

Monitoring and reporting of performance pursuant to a variance is important to determine how the variance is working, whether violations have occurred, whether the NMMP should be adjusted, and what, if any, enforcement steps should be taken. Applicants for technical, economic and major public project construction variances are responsible for reporting to the Administrator pursuant to SMC 25.08.640, 25.08.650 and 25.08.655, respectively.

RULES:

1. The Administrator may request information about monitoring staff sufficient to determine whether the monitoring can be performed impartially. For example, the Administrator may request information about the independence of the monitor, including the monitor's employment relationships, past or current, with the applicant. If the Administrator finds that monitoring staff cannot or are not independently and impartially performing their duties, the Administrator may require that different monitoring arrangements be made.
2. The applicant shall be responsible for providing an independent, impartial monitor to perform the following duties:
 - a. Meet with City Noise Abatement Coordinator before the variance takes effect to discuss expected duties and reporting requirements;
 - b. Gather periodic noise data and take periodic noise measurements of performance pursuant to the variance, as directed by City Noise Abatement Coordinator and the NMMP;

- c. Perform needed maintenance on noise monitoring equipment used to gather data and measure noise if not otherwise performed by the applicant;
- d. Produce periodic monitoring reports for the applicant and DPD. (If the applicant is a public agency, it must post the reports on the applicant agency's website for public review.) The reports shall be for the period during which noise in excess of noise code limits is to occur pursuant to the variance, but may also be for longer periods:
 - i. weekly reports describing noise measurements for activities during the past week; performance of the mitigation measures; any violations of the conditions of the variance or of the noise code and measures taken, if any, to correct the violation; and all complaints from the public and others and resolution of complaints. Weekly reports are due to DPD no later than the Wednesday following the completion of the reported week.
 - ii. annual reports summarizing performance under the variance including a summary of the information in the weekly reports (refer to Section H.1 for more details about the requested information). Annual reports are due to DPD no later than one week following the completion of the reported year.
 - iii. a final report at the end of the project summarizing and evaluating performance under the variance.
- e. The applicant and monitors shall investigate and assist the Administrator in responding to complaints about violations of the variance and other noise related to the project. The applicant and monitors are expected to report to the City Noise Abatement Coordinators complaints about variance violations as soon as possible but in no case more than 12 hours after receipt of the complaint.
- f. If the NMMP includes a monitoring and reporting condition and the variance holder fails to submit monitoring reports in a timely manner as required by the NMMP, DPD may take enforcement action that could include revocation of the variance.

SECTION D. Public notice and opportunity for comment

Variance types subject to this section of the rule: economic, technical, major public project and all variance extension applications.

Public notice and comment provisions are found in SMC 25.08.590 and 25.08.600.

RULES:

1. DPD will not grant a technical, economic or major public project construction variance until the following public notice and opportunities for public comment have been fulfilled:
 - a. DPD staff has published the notice of application in DPD's Land Use Information Bulletin (LUIB);
 - b. Mailed notice has been sent by DPD to properties within 300 feet of the sound source covered by the application.
 - i. For major public project construction variance applications and other applications for noisy activity along a lineal path, DPD shall mail notice to properties within 300 feet of each side of the portion of a lineal path where noisy activity will occur.
 - ii. DPD may expand notice beyond 300 feet when warranted if DPD's Noise Abatement Coordinators believe a larger area would be subject to construction noise exposure, based on topography or other considerations.
 - c. DPD has posted signs that are at least 18 inches by 24 inches in dimension and include information describing the name of the applicant, the type of variance requested, and the site affected by the proposed activity.
 - i. If the proposed site of a major public project variance consists of a lineal route or right-of-way subject to construction at the surface, above surface grade or involving cut-and-cover tunneling or similar forms of grading open to the surface, DPD will determine the appropriate number of signs to be posted by DPD along the route in locations that will notify the public in areas where residences and businesses will be affected.
 - ii. For projects including underground tunneling, the Administrator will determine the number and appropriate location of signs, and may exclude areas where tunneling is deep enough that noise related impacts are not anticipated to disturb public health, safety and welfare.
 - d. Published notice of the application in a community newspaper serving the affected area;
 - e. Provided opportunity for public comment, consisting of a 14-day period that begins with the publication of the notice of application in the LUIB.

During a public comment period, DPD will accept written comments that are mailed or emailed to DPD's Noise Abatement Coordinator.

City of Seattle Dept. of Planning & Development
ATTN: Noise Abatement
700 Fifth Ave., Suite 2000
P.O. Box 34019
Seattle, WA 98124-4019
E-mail address: prc@seattle.gov

2. For applications for technical and economic variances proposed for a duration of more than two weeks, and for major public project construction variances, the applicant shall participate in a public meeting, conducted by DPD. The purpose of the meeting is for the applicant to provide information explaining the proposal, and take public comments related to the variance application. This shall occur after the application has been deemed complete. Twenty-one days advance notice of the meeting shall be required. DPD will publish a meeting notice in a community newspaper serving the affected area, publish notice in DPD's LUIB, and provide mailed notice as described in this Section. DPD will arrange the meeting location. The meeting shall be held in the geographic sector of the city where the proposed activity would occur, with flexibility of distance afforded to the applicant to secure adequately-sized meeting facilities. Notice of the meeting may be combined with the notice of application.
3. All notice fees shall be charged to the applicant.

SECTION E. Application review standards

All variance types are subject to this section of the rule, unless a specific provision states otherwise.

In SMC 25.08.010 the Noise Control Code declares:

"It is the policy of 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. It is the express intent of the City Council 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.

Review standards for variance applications are aimed at establishing whether the intent of the City's noise policy will be fulfilled even if a variance is granted.

RULES:

1. Noise Abatement Coordinators, on behalf of the Administrator, will review the information provided that justifies the need for a variance and consider at a minimum:
 - a. Whether the applicant's information and analysis is accurate and complete (i.e., does it contain all of the elements required by the code);
 - b. The physical characteristics of the sound proposed to be emitted pursuant to the variance;
 - c. The proposed times and proposed duration of the sound to be emitted;
 - d. The topography and population density of the area in which the sound is proposed to be emitted;
 - e. Whether the public health and safety is endangered;
 - f. Relative interests of the applicant, other owners or possessors of property likely to be affected by the noise, and the general public;
 - g. Whether proposed noise mitigation approaches are likely to be effective; and
 - h. For economic variances, whether the proposed sound source predates the receiver(s).

2. NMMPs. Noise Abatement Coordinators will review a NMMP to compare the proposed construction processes, construction timeframes, and projected noise levels with and without noise mitigation measures. This will assist the Noise Abatement Coordinator in determining whether the proposed NMMP will sufficiently protect the public health, safety and welfare. The Noise Abatement Coordinator will also review the applicant's proposed process for informing the public in the affected areas about the provisions of the variance, and may require changes if additional communication methods or other methods would better inform the public.

3. Technical Variance Applications. The Noise Abatement Coordinator will:
 - a. Determine whether the applicant demonstrates that no other practical means are available to prevent, abate or control the noise involved, and the probable effectiveness of proposed noise control actions.
 - b. Review the proposed reporting schedule, determine that it is at appropriate intervals, and assure that the report proposes to detail the actions being taken during each reporting period to develop a means of noise control and/or to reduce the noise involved, and to relate those actions to the current technology.
 - c. Review the proposed duration of the technical variance and set the duration of the technical variance in light of the proposed activities and the information provided by the applicant.

4. Economic Variance Applications. The Noise Abatement Coordinator will:
 - a. Determine whether the applicant has shown that noise-reducing measures must be implemented over a period of time due to their extent or cost.

- b. Review the information provided and determine the duration of the variance and the timetable for taking the prescribed noise-reducing measures. The duration shall be for a period not to exceed the time that is reasonable in the view of the Administrator to take necessary noise abatement measures, and the variance will be conditioned on compliance with the timetable.

SECTION F. Variance effective dates and issuance of decisions

All variance types are subject to this section of the rule.

A temporary variance is effective on the date stated in the variance. Technical or economic variances are effective 30 days following the mailing of the decision granting the variance. For a major public project construction variance, the variance can take effect no sooner than 30 days following the mailing of the decision granting the variance, but the dates or periods during which the noise limit can be exceeded will be set by the variance and will normally be the intended date when the construction requiring the variance commences. For variances other than temporary variances, if the variance is appealed to the Hearing Examiner, the effective date is the date the Hearing Examiner issues a written decision on the appeal that affirms the decision.

RULES:

1. The Administrator shall mail a decision on the variance application to the applicant and file it at the Noise Abatement Program Office (located on the 22nd floor of the Seattle Municipal Tower, 700 Fifth Avenue). In addition:
 - a. For variances other than temporary variances, publication of the decision notice in the LUIB will signify the issuance date.
 - b. For a temporary variance, the Administrator will mail the decision to the applicant within 14 days after a complete application has been received.
 - c. For any other variance, the Administrator will issue a decision within 60 days after the public meeting on the variance application. This timeframe may be extended for the period of days in which the applicant is responding to a request for more information from the Administrator, and any period of days requested by the applicant to supplement or revise the application.
 - d. For purposes of this Rule, an application for a noise variance will be considered complete when the Noise Abatement Coordinator determines that the application is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. A determination that the application is deemed complete, requests for additional required information, and indications of changes in the timeframe for review, will be communicated in writing to applicants.

2. The Administrator shall file a decision on a "one-year check-in review" at the Noise Abatement Program Office and mail it to the applicant in a timeframe consistent with Section H.5 of this Rule. See Section 25.08.655.D.5 of the Noise Control Code for more information about effective dates for this type of decision.
3. All decisions shall be in writing, and shall state findings and conclusions supporting the decision.
4. No notice of decision shall be provided for a temporary variance beyond that required by the conditions for that variance. A DPD decision on a temporary variance shall include conditions that spell out methods by which affected persons and businesses are to be notified of the variance. Depending upon local property patterns and topography that influence exposure to the proposed noise source, the conditions imposed shall define the total physical area within which persons and businesses must be notified.
5. DPD will provide notice of a decision on an application for an economic, technical or major public project construction variance through:
 - a. Publishing notice of the decision in DPD's LUIB;
 - b. Mailed notice of the decision to the applicant and to interested persons who have requested specific notice and who have submitted comments on the application; and
 - c. Publishing notice of the decision in a community newspaper serving the affected area.

SECTION G. Extension of variances

All variance types, except temporary variances, are subject to this section of the rule.

A temporary variance can last a maximum of 14 days and may not be extended, although, more than one temporary variance may be issued for the same project.

Technical, economic, and major public project construction variances may be extended on the same terms and conditions and for the same periods that would be appropriate on the initial granting of a variance. This does not mean that the same terms and conditions will automatically apply to any extension, but that the Administrator has the same discretion to deny, grant or condition an extension as was available for the initial grant of the variance.

An application to extend a technical, economic, or major public project construction variance must be filed at least 60 days prior to the expiration of the variance. (*See Section A of this Rule for application information*).

RULES:

1. An extension of a variance is not the same as a decision resulting from a “one-year check-in review” on a major public project construction variance and this section does not cover that process (see Section H below). However, the holder of a major public project construction variance can qualify for an extension of the major public project variance, and can apply for an extension if more time will be needed to complete the major public project.
2. DPD will provide public notice of the application and required meeting to take public comment for a proposal to extend a technical, economic, or major public project construction variance as described in Section D of this Rule.
3. Notice of the decision on whether to extend a technical, economic or major public project construction variance will be provided as described for decisions in Section F of this Rule.
4. Applications for extensions will be reviewed using the same standards of review described in Section E of this Rule, except the Administrator can also consider other information in determining whether to grant the extension, including but not limited to monitoring reports and other reports submitted to the Administrator concerning performance under the existing variance, including enforcement records and the numbers of complaints, violations, penalty history, etc.

SECTION H. “One-Year Check-in Review” of Major Public Project Construction Variances

Only Major Public Project Construction Variances are subject to this section of the rule.

The Administrator will conduct a “one-year check-in review” of major public project construction variances to review how the variance operated during the first year of construction. The Administrator will assess performance with respect to variance terms, including NMMP provisions and other conditions of the variance. The Administrator will evaluate whether the variance terms and conditions are adequately protecting the public health and safety, whether construction noise is being reasonably controlled or mitigated and whether there are more reasonable methods of noise control that can be employed.

The “one-year check-in review” also provides an opportunity for the public to comment on project-related noise impacts, terms and effectiveness of the noise variance and the NMMP, and any recommended improvements or modifications. The Noise Abatement Coordinator will review comments received prior to issuing a decision.

RULES:

1. The holder of the variance shall notify the Administrator of the start date of construction to which the variance applies, within 15 days before the start of such construction. No later than the one-year anniversary date of the start of construction to which the variance applies, the holder of the variance shall submit a performance monitoring report to the Administrator prepared by an independent monitor (*see Section C for discussion of monitors*). The annual performance monitoring report submitted shall contain an evaluation of performance under the variance, including the effectiveness of noise management and mitigation during project-related construction and compliance with the terms and conditions of the variance, including but not limited to the following:
 - a. The number and nature of noise complaints received by the variance holder and by DPD about the major public construction project;
 - b. The number and type of violations of the variance (and of any other provisions of the noise code) identified, including details to understand when the noise violation occurred, how long it occurred, the decibel level of the noise and by how much it exceeded the allowable standard under either the code or the variance, and the source equipment or process that caused or contributed to the violation;
 - c. A description of how such complaints and violations were addressed; and
 - d. Changes made in construction methods or otherwise during the first year of construction in response to the complaints and violations.
2. If the variance holder fails to promptly submit any required performance monitoring report in a timely manner (e.g., after the one-year anniversary date of the start of construction to which the variance applies), the Administrator may take enforcement action, which can include revocation of the variance or other enforcement remedies.
3. As part of the review, the Administrator will review the performance monitoring report and any public comments received and may conduct independent research and evaluation of performance. The Administrator may request that the applicant provide additional information such as monitoring data that is not already available, in order to interpret performance and compliance.
4. DPD will provide notice and opportunity to comment on a "one-year check-in review" as follows:
 - a. Publish notice of the review in DPD's LUIB;
 - b. Mail notice to properties within 300 feet of the sound source covered by the review (with this proximity determined as described in the similar subsection D.1.b of this Rule);

- c. Publish notice of the review in a community newspaper serving the affected area;
 - d. Opportunity for public comment will consist of a 14-day period that begins with the publication of the notice in the LUIB. During the public comment period, DPD will accept written comments that are mailed or e-mailed to the DPD Noise Abatement Coordinator. (Refer to subsection D.1.e of this Rule for information on mailing.)
5. No later than 15 months after the start of construction work, the Administrator will make a written "one-year check-in review" decision either to affirm, modify or revoke the variance as provided in SMC 25.08.655.D.
 6. If the decision is to modify the variance or the terms of the NMMP, the applicant must update the NMMP and submit it to the Administrator within the timeframe listed in the decision.
 7. Notice of decisions on "one-year check-in reviews" will be provided in the same manner as described for decisions on applications in subsection F.5 of this Rule.

SECTION I. Administrator's authority to grant or deny a temporary noise variance

This section of the rule applies only to temporary variances.

Section 25.08.590.C of the Noise Control Code authorizes the Administrator to deny a temporary noise variance if the Administrator determines that another type of variance is more appropriate. Conversely, the Administrator may grant a temporary noise variance if the Administrator finds that the scale and duration of the requested relief is more appropriate for a temporary noise variance than for a technical, economic, or major public project construction variance.

RULE:

1. In making a determination to grant or deny a temporary noise variance, the Administrator will review other temporary variances granted to an applicant for the given project, planned construction activities, including the duration of construction and the extent to which noise is anticipated during construction. If a variance is denied, the Administrator may suggest that an applicant apply for a different kind of variance, in which case, a new application shall be required.