

March 16, 2015

To: King County Council

Subject: March 16, 2015, Public Hearing Comments -- Proposed Ordinance 2014-0480

Presented herein are comments from the Greater Maple Valley Unincorporated Area Council (GMVUAC) regarding the subject proposed Ordinance Related to Noise Provisions for consideration of the King County Council at its Public Hearing on March 16, 2015.

The GMVUAC, which has served our local community for over 38 years, is an approved organization within the Community Service Area (CSA) program and an all-volunteer, locally elected advisory body to the King County Council. All GMVUAC members reside in unincorporated King County within the Tahoma School District #409 service area. The GMVUAC represents and advocates with King County, state officials, and other organizations for our unincorporated area's citizens' interests.

General Comments

Thank you for the ample time given us to review the Proposed Ordinance. However, such a complex piece of legislation, which proposes numerous changes to existing law, requires more time and much more basic information to allow laypersons, such as ourselves, to make a fully informed decision as to its possible, as well as its likely, adverse as well as beneficial impacts on the personal lives and property interests of the area citizens we represent. Although there is a summary of changes coupled with a Staff Report, what is missing is a common-sense, straight-forward discussion and illustration as to the effects of the proposed legislation.

Because of proposed changes in how, when, where and to what degree noise levels are set as acceptable and measured for purposes of enforcement, it would be most helpful to supplement the numerical criteria with examples illustrating the noise requirements under the current Code as compared with the proposed new criteria. Without such illustrative examples, it is nigh impossible for any citizen to grasp what impact, if any, the proposed changes will make. For example:

Q. Are there noise-generating activities permissible under the current Code that will violate the proposed new regulations?

Q. Conversely, are there current noise generating activities that violate the existing Code but will be permissible under the proposed new regulations? Answering these two queries will not only help educate our citizens, but will very likely promote acceptance of the new regulations in the future. Moreover, should these illustrations point out a very real discrepancy between the existing and proposed noise regulations that will likely have a very real and adverse impact on personal lives and property interests, then perhaps the King County Council should revisit Proposed Ordinance 2014-0480 with a recommendation that significant changes be made to it.

Specific Comments

1. Section 4. Under the Proposed Ordinance both the Department of Permitting and Environmental Review (DPER) and the Sheriff's Office have important, but perhaps some-what differing, responsibilities. The amendatory language should include at least a brief discussion of the shared and separate responsibilities of these two agencies, as the current language could be construed such that DPER only has noise enforcement authority where a County permit is involved. This is a mistaken impression that should be corrected.

2. Sections 4 and 5. There is insufficient rationale set forth to justify the total removal of the Seattle-King County Department of Public Health (DPH) from the noise program. This is one agency that has overlapping jurisdictional powers that prove useful and necessary to administer and enforce an effective noise control program in King County, both within and outside of municipal boundaries. The Proposed Ordinance may certainly add DPER to those public bodies having administrative and enforcement authority in the noise program, but such an addition should not result in the total removal of DPH and its jurisdictional reach.

3. Section 49. One apparent adverse impact stemming from the removal of DPH from the enforcement scheme of the Proposed Ordinance is that the noise levels affecting unincorporated King County residents emanating from within incorporated municipal boundaries will no longer be regulated by this County Code (See Section 49(B) -- existing that is proposed to be deleted).

Q. What assurances do County residents have that their personal lives and property interests will not be adversely affected by the lack of consistent regulations for noise, regardless of the source of such disturbance?

Q. Will there be equal protection of all citizens of King County, both within and outside of municipal boundaries?

Q. Or will unincorporated King County residents be faced with unequal treatment from a variety of municipal standards different from those requirements set forth in the Proposed Ordinance?

Q. Furthermore, will municipal residents be able to complain about neighboring unincorporated property owner generated noise based on the Proposed Ordinance or based on their municipal-adopted noise standards?

In order to apply consistent standards and negate possible disparate treatment of the citizens of King County, regardless of where they live, we suggest DPH not be removed from its present role in the noise program and that noise standards continue to be applied to generating sources located within municipal boundaries that affect neighboring unincorporated properties.

4. Sections 49, 51, 76, and 77. It is difficult to determine whether residential uses of gas-powered lawnmowers and emergency power generators are covered activities and, thus, subject to noise restrictions, or exempt activities. Because construction activities that are “normal and usual sounds” are not strictly regulated as to times and levels, so should these “normal and usual” residential area sounds be subject to relaxed standards, or totally exempt.

5. Sections 51, 65, 78, and 80. People living in a rural environment enjoy their peace and solitude, especially in the evening hours when outdoor activities abound and windows are open to let in the cool breezes. There is no known justification for allowing daytime noise levels to continue into the late evening hours past 7 PM on any day. Accordingly, we urge the Council to consider all noise levels, from construction, watercraft or whatever source, be reduced to nighttime limits commencing at 7 PM on Monday through Sunday. Daytime noise levels are appropriate to commence after 7 AM on weekdays, and after 9 AM on weekends/holidays. If a particular project upon showing substantial need requires extended hours of operation at daytime noise levels, a variance may be applied for and, if deemed appropriate, approved pursuant to suitable conditions (See Section 82).

6. Section 63. Regarding non-operational vehicles:

Q. Do “sounds created by motor vehicles” exempt from the noise regulations include non-operational vehicles that are being worked on in residential garages or driveways?

Such private automotive operations, including a variety of other motorized vehicle repair “shops”, are quite ubiquitous in unincorporated King County.

7. Sections 70 and 72. The insertion of descriptive standards in lieu of measurable numeric standards to determine what constitutes a nuisance or public disturbance from a noise source is problematic at best and unenforceable at worst. For example, recent Washington Court decisions have expressed the opinion certain sounds may be expressions of free speech protected by the U.S. Const. Amend. I and Wash. Const. art. I, sec. 5; accordingly, local noise standards prohibiting certain sounds that were descriptive rather than numerical were over-broad and perhaps vague. Defining the term “public disturbance noise” as one which causes an “unreasonable” disturbance or annoyance is unsettling as such connotes a reasonable person standard that may in fact vary depending on time, place, and manner in which the sounds are received and perceived. The numeric noise standards should not be superseded by descriptive standards that, although perhaps written in an objective fashion, are in effect very subjective and subject to interpretation by not only enforcement personnel, but the courts and citizens as well.

8. Sections 76 and 77. The listed exemptions do not appear to include religious-related sounds or events, including such occurrences as ringing the church bells at 12:00 a.m. on New Year’s Day (for more than 5 min), and church-sponsored events that may include outdoor fireworks displays (lasting for more than 5 min). Such religious organization-sponsored noise generating occurrences must be included as exempt activities.

9. Sections 76 and 77. Non-commercial agricultural or animal-related activities, such as hobby or small family farms and kennel operations, are not exempt from the noise standards. Because these activities are lawful uses of property in unincorporated King County, there is no just reason for the disparate treatment of them from commercial agricultural (as such term is defined in the Proposed Ordinance in Section 7(A)) operations and, therefore, they must be included as exempt activities.

10. New Section 78. We are concerned construction decibel limits appear to be replaced with only time-of-day limitations, with the outer limits of the time envelope possibly being enlarged:

Q. Does this mean construction related noise will no longer be subject to a measurable sound criterion?

11. New Section 78. The phrase “normal and usual sounds” is nowhere defined in the Proposed Ordinance. This could be a great source of controversy by building or construction contractors as to what precisely constitutes “normal and usual sounds” of construction. For example, does the use of hammers and table saws constitute a “normal and usual sound” emanating from a construction site, including the construction of a new home in a densely populated residential area? Undefined standards raise the specter of void for vagueness challenges, and should be

avoided if at all possible in regulatory schemes.

12. Section 82. Variances must be carefully addressed, especially those that may relate to demonstration or specially authorized projects in the rural areas. The GMVUAC has experienced noise-related problems with at least one long-term project in the Ravensdale area that can include nighttime truck hauling of reclamation materials. In this instance, although the specific project site may be very local and of definite boundaries, the extent of and time periods allowed for associated heavy truck traffic is indefinite and widespread over many miles of rural roads adjoining many residents, the duration of which is not temporary. The requisite public notice under KCC Section 20.20.060(H) includes only those property owners within a radius of 500 feet of the project site, but no fewer than 20 owners in total (i.e., the radius must be expanded to include no fewer than 20 individual property owners). However, what is missing from such notice are all those property owners and residents who will be significantly adversely affected by the after hour noise levels generated by traffic. Q. Moreover, what constitutes a “substantial number of people” as such terminology is used in this Section in order to justify receiving a variance?

The GMVUAC suggests that long term and demonstration projects not of a temporary nature having a likely adverse impact on noise levels for distances greater than 500 feet from the project site not be eligible for a variance from the Proposed Ordinance noise standards. Moreover, special project permits issued by DPER should not include any exceptions to the Proposed Ordinance noise standards; the Proposed Ordinance should be strictly enforced and not subject to project-by-project evaluation and ad hoc exceptions.

13. Section 87. The use of the word “may” denotes discretion. Thus, there is no duty on either the part of DPER or Sheriff to actually enforce the provisions of the Proposed Ordinance. The Council is asked to seriously consider that this word alone turns what should be an essential duty to administer and enforce a program essential to public health, welfare and safety, into nothing other than just another environmental protection regulation having no teeth. The GMVUAC strongly urges the Council to change the word “may” to the command “shall” and give actual meaning and usefulness to the Proposed Ordinance.

14. Section 104. The use of the term “unreasonable” to describe noise and complaints is itself unreasonable. Using an objective term to describe a very subjective subject matter, as set forth in Paragraph 1, leaves much open for interpretation. The GMVUAC is concerned a report generated using such terminology as the metric may be of little if any practical use in addressing future changes to the Proposed Ordinance.

The GMVUAC would like to thank the King County Council in advance for its consideration of the foregoing comments.

Steve Hiester, Chair
Greater Maple Valley Unincorporated Area Council