

ORDINANCE NO. 9962 (N.S.)

AN ORDINANCE AMENDING TITLE 3, DIVISION 6, CHAPTER 4
OF THE SAN DIEGO COUNTY CODE OF REGULATORY ORDINANCES
RELATING TO NOISE CONTROL AND ABATEMENT

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. Title 3, Division 6, Chapter 4 of the San Diego County Code of Regulatory Ordinances is amended to read as follows:

CHAPTER 4. NOISE ABATEMENT AND CONTROL

SEC. 36.401. PURPOSE.

Disturbing, excessive or offensive noise interferes with a person's right to enjoy life and property and is detrimental to the public health and safety. Every person is entitled to an environment free of annoying and harmful noise. The purpose of this chapter is to regulate noise in the unincorporated area of the County to promote the public health, comfort and convenience of the County's inhabitants and its visitors.

SEC. 36.402. DEFINITIONS.

The following definitions shall apply to this chapter:

- (a) "Ambient noise level" means the composite of existing noise from all sources at a given location and time. Ambient noise is sometimes referred to as background noise.
- (b) "Average sound level" means the level in decibels of the mean-square A-weighted sound pressure during a stated time period, with reference to the square of the standard reference sound pressure of 20 micropascals. The "average sound level" is equivalent to the industry standard L_{EQ} .
- (c) "A-weighted sound level" means the sound level in decibels as measured on a sound level meter using the A-weighted network. The A-weighted network is the network for measuring sound that most closely resembles what the human ear hears. Sound measured using the A-weighted network is designated dBA.
- (d) "Construction equipment" means tools, machinery or equipment including "special construction equipment" defined in the Vehicle Code, used in a construction operation on any construction site.

(e) "Container" means any receptacle, regardless of contents, manufactured from wood, metal, plastic, paper or any other material including but not limited to any barrel, basket, box, crate, tub, bottle, can or refuse container.

(f) "Decibel" means a unit for measuring the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals.

(g) "Disturbing, excessive or offensive noise" means any sound or noise that:

- (1) Endangers the health or safety of any person.
- (2) Causes discomfort or annoyance to a person of normal sensitivity.

(h) "Emergency work" means work: (1) necessary to restore property to a safe condition following a public calamity, (2) required to protect a person or property from injury or damage or (3) by a public or private utility to restore utility service.

(i) "Impulsive noise" means a single noise event or a series of single noise events, which causes a high peak noise level of short duration (one second or less), measured at a specific location. Examples include, but are not limited to, a gun shot, an explosion or a noise generated by construction equipment.

(j) "Maximum sound level" means the highest sound level reached when measuring noise with a sound level meter using the A-weighted network and slow time weighting. The "maximum sound level" is equivalent to the industry standard known as L_{MAX} .

(k) "Motor vehicle" means any self-propelled vehicle as defined in the Vehicle Code and includes a mini-bike and a go-cart.

(l) "Noise control officer" means the County Director of the Department of Planning and Land Use or a person appointed or retained by the Director to perform this function.

(m) "Occupied property" means property on which there is a building for which a certificate of occupancy has been issued.

(n) "Off-road recreational vehicle" means a motor vehicle that is being operated other than on a public or private roadway, whether or not the vehicle was designed or intended for off-road use and may include but is not limited to a motorcycle, go-cart, camper, dune buggy, ATV, racecar, automobile, SUV, pick-up truck or truck. A piece of farm equipment or a motor vehicle being used for an agricultural, military, fire, emergency or law enforcement use or by a public or private utility for work on utilities is not an "off-road recreational vehicle."

(o) "Plainly audible" means any sound that can be detected by a person using his or her unaided hearing faculties. As an example, if the sound source under investigation is a portable or personal vehicular sound amplification or reproduction device, the detection of the rhythmic base component of music is sufficient to verify plainly audible sound. The noise control officer need not determine the title, specific words or the artist performing the music.

(p) "Powered model vehicle" means a model airplane, model boat or model vehicle of any type or size not designed for carrying persons or property and which may be propelled other than by manpower or wind power.

(q) "Sound amplifying equipment" means any machine or device used to amplify music, the human voice or any sound and does not include a standard automobile radio when used and heard only by the occupants of the vehicle in which it is installed.

(r) "Sound level" means the weighted sound pressure level obtained using a sound level meter and frequency weighting network as provided in the American National Standards Institute (ANSI) specifications for sound level meters. As used in this chapter, "sound level" means the same as "noise level."

(s) "Sound level meter" means an instrument for the measurement of sound levels, which meets or exceeds the requirements pertinent for a type 1 or type 2 meter in the ANSI specifications for sound level meters, ANSI S1.4-1983 or its latest revision.

(t) "Sound truck" means a "vehicle," as that term is defined in the Vehicle Code that has or uses sound amplifying equipment.

SEC. 36.403. SOUND LEVEL MEASUREMENT.

(a) A sound level measurement made pursuant to this chapter shall be measured with a sound level meter using A-weighting and a "slow" response time, as these terms are used in ANSI S1.1-1994 or its latest revision.

(b) Each measurement shall be conducted at the boundary line of the property on which the noise source is located or any place on the affected property, but no closer than five feet from the noise source.

(c) The sound level meter shall be calibrated and adjusted by means of an acoustical calibrator of the coupler-type to assure meter accuracy within the tolerances in the ANSI specifications for sound level meters, ANSI S1.4-1983 or its latest revision. The sound level meter shall be used as provided in the manufacturer's instructions.

SEC. 36.404. GENERAL SOUND LEVEL LIMITS.

(a) Except as provided in section 36.409 of this chapter, it shall be unlawful for any person to cause or allow the creation of any noise, which exceeds the one-hour average sound level limits in Table 36.404, when the one-hour average sound level is measured at the property line of the property on which the noise is produced or at any location on a property that is receiving the noise.

**TABLE 36.404
SOUND LEVEL LIMITS IN DECIBELS (dBA)**

ZONE	TIME	ONE-HOUR AVERAGE SOUND LEVEL LIMITS (dBA)
(1) RS, RD, RR, RMH, A70, A72, S80, S81, S87, S90, S92 and RV and RU with a density of less than 11 dwelling units per acre.	7 a.m. to 10 p.m.	50
	10 p.m. to 7 a.m.	45
(2) RRO, RC, RM, S86, V5 and RV and RU with a density of 11 or more dwelling units per acre.	7 a.m. to 10 p.m.	55
	10 p.m. to 7 a.m.	50
(3) S94, V4 and all commercial zones.	7 a.m. to 10 p.m.	60
	10 p.m. to 7 a.m.	55
(4) V1, V2 V1, V2 V1 V2 V3	7 a.m. to 7 p.m.	60
	7 p.m. to 10 p.m.	55
	10 p.m. to 7 a.m.	55
	10 p.m. to 7 a.m.	50
	7 a.m. to 10 p.m.	70
	10 p.m. to 7 a.m.	65
(5) M50, M52 and M54	Anytime	70
(6) S82, M56 and M58.	Anytime	75
(7) S88 (see subsection (c) below)		

(b) Where a noise study has been conducted and the noise mitigation measures recommended by that study have been made conditions of approval of a Major Use Permit, which authorizes the noise-generating use or activity and the decision making body approving the Major Use Permit determined that those mitigation measures reduce potential noise impacts to a level below significance, implementation and compliance with those noise mitigation measures shall constitute compliance with subsection (a) above.

(c) S88 zones are Specific Planning Areas which allow different uses. The sound level limits in Table 36.404 above that apply in an S88 zone depend on the use being made of the property. The limits in Table 36.404, subsection (1) apply to property with a residential, agricultural or civic use. The limits in subsection (3) apply to property with a commercial use. The limits in subsection (5) apply to property with an industrial use that would only be allowed in an M50, M52 or M54 zone. The limits in subsection (6) apply to all property with an extractive use or a use that would only be allowed in an M56 or M58 zone.

(d) If the measured ambient noise level exceeds the applicable limit in Table 36.404, the allowable one-hour average sound level shall be the one-hour average ambient noise level, plus three decibels. The ambient noise level shall be measured when the alleged noise violation source is not operating.

(e) The sound level limit at a location on a boundary between two zones is the arithmetic mean of the respective limits for the two zones. The one-hour average sound level limit applicable to extractive industries, however, including but not limited to borrow pits and mines, shall be 75 decibels at the property line regardless of the zone in which the extractive industry is located.

(f) A fixed-location public utility distribution or transmission facility located on or adjacent to a property line shall be subject to the sound level limits of this section measured at or beyond six feet from the boundary of the easement upon which the facility is located.

SEC. 36.405. REPAIRING, REBUILDING OR TESTING MOTOR VEHICLES.

It shall be unlawful for any person to repair, rebuild or test any motor vehicle in such a manner as to cause a disturbing, excessive or offensive noise as defined in section 36.402 of this chapter.

SEC. 36.406. POWERED MODEL VEHICLES.

It shall be unlawful for any person to operate a powered model vehicle between 9 p.m. and 7 a.m. A powered model vehicle operated in a County park shall meet the daytime sound level standards for an RS zone measured at a point 100 feet from the park property line or 100 feet from where the model vehicle is being operated, whichever is less.

SEC. 36.407. REFUSE VEHICLES & PARKING LOT SWEEPERS.

No person shall operate or allow to be operated, a refuse compacting, processing, or collection vehicle or a parking lot sweeper between the hours of 10 p.m. to 6 a.m., in or within 100 feet of a residential zone.

SEC. 36.408. HOURS OF OPERATION OF CONSTRUCTION EQUIPMENT.

Except for emergency work, it shall be unlawful for any person to operate or cause to be operated, construction equipment:

(a) Between 7 p.m. and 7 a.m.

(b) On a Sunday or a holiday. For purposes of this section, a holiday means January 1st, the last Monday in May, July 4th, the first Monday in September, December 25th and any day appointed by the President as a special national holiday or the Governor of the State as a special State holiday. A person may, however, operate construction equipment on a Sunday or holiday between the hours of 10 a.m. and 5 p.m. at the person's residence or for the purpose of constructing a residence for himself or herself, provided that the operation of construction equipment is not carried out for financial consideration or other consideration of any kind and does not violate the limitations in sections 36.409 and 36.410.

SEC. 36.409. SOUND LEVEL LIMITATIONS ON CONSTRUCTION EQUIPMENT.

Except for emergency work, it shall be unlawful for any person to operate construction equipment or cause construction equipment to be operated, that exceeds an average sound level of 75 decibels for an eight-hour period, between 7 a.m. and 7 p.m., when measured at the boundary line of the property where the noise source is located or on any occupied property where the noise is being received.

SEC. 36.410. SOUND LEVEL LIMITATIONS ON IMPULSIVE NOISE.

In addition to the general limitations on sound levels in section 36.404 and the limitations on construction equipment in section 36.409, the following additional sound level limitations shall apply:

(a) Except for emergency work or work on a public road project, no person shall produce or cause to be produced an impulsive noise that exceeds the maximum sound level shown in Table 36.410A, when measured at the boundary line of the property where the noise source is located or on any occupied property where the noise is received, for 25 percent of the minutes in the measurement period, as described in subsection (c) below. The maximum sound level depends on the use being made of the occupied property. The uses in Table 36.410A are as described in the County Zoning Ordinance.

**TABLE 36.410A.
MAXIMUM SOUND LEVEL (IMPULSIVE) MEASURED
AT OCCUPIED PROPERTY IN DECIBELS (dBA)**

OCCUPIED PROPERTY USE	DECIBELS (dBA)
Residential, village zoning or civic use	82
Agricultural, commercial or industrial use	85

(b) Except for emergency work, no person working on a public road project shall produce or cause to be produced an impulsive noise that exceeds the maximum sound level shown in Table 36.410B, when measured at the boundary line of the property where the noise source is located or on any occupied property where the noise is received, for 25 percent of the minutes in the measurement period, as described in subsection (c) below. The maximum sound level depends on the use being made of the occupied property. The uses in Table 36.410B are as described in the County Zoning Ordinance.

**TABLE 36.410B.
MAXIMUM SOUND LEVEL (IMPULSIVE) MEASURED AT OCCUPIED
PROPERTY IN DECIBELS (dBA) FOR PUBLIC ROAD PROJECTS**

OCCUPIED PROPERTY USE	dB(A)
Residential, village zoning or civic use	85
Agricultural, commercial or industrial use	90

(c) The minimum measurement period for any measurements conducted under this section shall be one hour. During the measurement period a measurement shall be conducted every minute from a fixed location on an occupied property. The measurements shall measure the maximum sound level during each minute of the measurement period. If the sound level caused by construction equipment or the producer of the impulsive noise, exceeds the maximum sound level for any portion of any minute it will be deemed that the maximum sound level was exceeded during that minute.

SEC. 36.411. CONTAINERS AND CONSTRUCTION MATERIAL.

It shall be unlawful for any person to handle, transport, or cause to be handled or transported in any public place, any container or any construction material in such a way

as to create a disturbing, excessive or offensive noise as defined in section 36.402 of this chapter.

SEC. 36.412. SIGNAL DEVICE FOR FOOD TRUCKS.

No person shall operate or cause to have operated or used any sound signal device other than sound-amplification equipment attached to a motor vehicle wagon or manually propelled cart from which food or any other items are sold which emits a sound signal more frequently than once every ten minutes in any one street block and with a duration of more than ten seconds for any single emission. The sound level of this sound signal shall not exceed 90 decibels at 50 feet from the point of the noise source.

SEC. 36.413. MULTIPLE FAMILY DWELLING UNITS.

Notwithstanding any other provision of this chapter it shall be unlawful for a person to create, maintain or cause to be maintained any sound within the interior of a multiple family dwelling unit which causes the noises level to exceed the limits set forth below in another dwelling unit:

**TABLE 36.413
ALLOWABLE INTERIOR NOISE LEVEL**

Type of Land Use	Hours		Allowable Interior Noise Level (dBA)	
		No Time	1 min in 1 hour	5 min in 1 hour
Multifamily	10 pm- 7 am	> 45	40	35
Residential	7 am-10 pm	> 55	50	35

(> greater than)

(less than or equal to)

SEC. 36.414. GENERAL NOISE PROHIBITIONS.

In addition to the general limitations on sound levels in section 36.404, the following additional prohibitions shall apply:

(a) It shall be unlawful for a person to make, continue or cause to be made or continued a disturbing, excessive or offensive noise.

(b) The characteristics and conditions which should be considered in determining whether a violation of this section has been committed include, but are not limited to, the following:

- (1) The level of noise.
- (2) Whether the nature of the noise is usual or unusual.
- (3) Whether the origin of the noise is natural or unnatural
- (4) The ambient noise level.
- (5) The proximity of the noise to a place where someone sleeps.
- (6) The nature and zoning of the area within which the noise emanates and where it is received.
- (7) The time of day the noise occurs.
- (8) The duration of the noise.
- (9) Whether the noise is recurrent, intermittent or constant.
- (10) Whether the noise is produced by a commercial or noncommercial activity.

(c) The following acts, among others, are declared to be disturbing, excessive and offensive noises that violate this chapter and are unlawful:

(1) Unnecessarily using or operating or allowing another person to use or operate a vehicle horn, signaling device or other similar device, other than as regulated by the Vehicle Code.

(2) Using, operating, playing or allowing another person to use operate or play, a radio, musical instrument, phonograph, television set or other device for the production or reproduction of sound:

(A) That disturbs the peace, quiet and comfort of persons of normal sensitivity residing in the area.

(B) That exceeds the levels in section 36.404 when measured at a distance of twenty-five feet from a device operating in a public right-of-way.

(C) That exceeds the levels in section 36.404 when measured at a distance of twenty-five feet from a device for the production or reproduction of sound operated in a County park unless a permit has been obtained from the County Parks and Recreation Department specifying the time, location and other conditions under which amplified

sound may be allowed within a County park. A person using, operating or playing a device for the production or reproduction of sound in a County park, however shall not exceed a level of 90 decibels when measured fifty feet from the source or exceed the levels in section 36.404 when measured at the park boundary. Subsection 36.414 (c)(2)(C) shall be enforced by the Parks and Recreation Department.

(3) It shall be a prima facie violation of section 36.414(c)(2)(A) if a device for the production or reproduction of sound that is being operated, used or played is plainly audible at a distance of 50 feet or more from the building, structure or vehicle in which it is located.

(4) Playing, using, operating or allowing to be played, used or operated any sound production or reproduction device or machine including but not limited to radio receiving sets, phonographs, musical instruments, loudspeakers and sound amplifiers, for commercial or business advertising purposes in, on, over or across any street, alley, sidewalk, park or public property in a manner as to violate the provisions of this ordinance is prohibited. This subsection shall not apply to sound amplifying equipment mounted on a sound truck where the operator complies with the following requirements:

(A) The only sound emitted is music or human speech and the music or speech emitted is not obscene, lewd, profane or slanderous.

(B) The sound truck is only operated between the hours of 8:00 a.m. and 9:00 p.m. or after 9:00 p.m. during public events and affairs of general public interest.

(C) The sound amplifying equipment is not being operated unless the sound truck is traveling at a speed of at least 10 miles per hour, except when the truck is stopped or impeded by traffic. If the sound truck is stopped by traffic the sound amplifying equipment shall not be operated for longer than one minute at each stop.

(D) Sound is not emitted within 100 yards of a hospital, school, church or courthouse.

(E) The volume of sound does not exceed a sound level of 65 decibels (on the "A" scale) at a distance of 50 feet from the sound amplifying equipment as measured by a sound level meter.

(F) No sound amplifying equipment is operated unless the axis of the center of the sound reproducing equipment is parallel to the direction of travel of the sound truck. Any sound reproducing equipment, however, may be placed upon the sound truck as to not vary more than 15° either side of the axis of the center of the direction of travel.

(G) No sound truck with its amplifying device in operation shall be driven on the same street past the same point more than twice in one hour.

(5) Causing or allowing unreasonably loud or disturbing verbal noise that is offensive or annoying to a person of normal sensitivity.

(6) Owning, possessing or harboring an animal which by any frequent or long continued noise causes annoyance or discomfort to a person of normal sensitivity in the vicinity. The written affirmation by two persons having separate residences that an animal has caused frequent or long continued noise, that has caused them annoyance or discomfort shall be prima facie evidence of a violation of this section. This subsection does not apply to animal noise emanating from a legally operated animal hospital, humane society, County Department of Animal Services facility, farm or other agricultural facility where keeping animals is allowed.

(7) Operating or causing to be operated or used any steam whistle attached to a stationary boiler, except to give notice of the time to start or stop work or as a signal of imminent danger.

(8) Using or allowing the use of a motor vehicle to knowingly produce a noise that causes annoyance or discomfort to a person of normal sensitivity in the vicinity of the noise by backfiring the engine, screeching the tires, operating without a muffler, altering the muffler or any other action that causes a disturbing, excessive or offensive noise.

SEC. 36.415. BURGLAR ALARMS.

(a) No person shall install or operate a burglar alarm in a residence or any other building that is not equipped with a functioning automatic cutoff device that terminates any noise emanating from the alarm within 15 minutes from the time the alarm is activated.

(b) No motor vehicle owner shall install or have in his or her possession a motor vehicle that is not equipped with a functioning automatic cutoff device that terminates any noise emanating from the alarm within 15 minutes from the time the alarm is activated.

(c) Notwithstanding the requirements of this section, a law enforcement officer may deactivate a building or motor vehicle alarm after the alarm is activated.

SEC. 36.416. NOISE FROM OFF-ROAD RECREATIONAL VEHICLES.

In addition to the general limitations on sound levels in section 36.404, no person shall operate or allow the operation of an off-road recreational vehicle on private property that produces a noise when measured at the boundary line of the property where the noise source is located or on any occupied property where the noise is received, that at any time exceeds the following maximum sound levels: 82 decibels between the hours of 7 a.m. and 7 p.m., 77 decibels between the hours of 7 p.m. and 10 p.m. and 55 decibels between the hours of 10 p.m. and 7 a.m.

SEC. 36.417. EXEMPTIONS.

(a) This chapter shall not apply to:

(1) Emergency work, as defined in this chapter, provided that (A) the person performing the work notifies noise control officer in advance, or as soon as practicable after the emergency and (B) any vehicle, device, apparatus or equipment used, related to or connected with the emergency work is designed, modified or equipped to reduce noise produced to the lowest possible level consistent with effective operation of the vehicle, device, apparatus or equipment.

(2) Noise reasonably related to authorized school: (A) bands, (B) athletic activities and (C) entertainments events.

(3) Sporting, entertainment and public events which are conducted pursuant to a license or permit issued by the County, within the scope of the license or permit. This section is not intended to excuse the act of an individual not participating in the event who violates this chapter.

(4) The operation of an emergency generator after a power failure, by an employee or agent of a law enforcement agency, fire department, hospital or other medical or surgical facility that is providing emergency medical services.

(5) The reasonable testing of an emergency generator by any person provided that the testing is conducted between the hours of 7 a.m. and 7 p.m.

(6) Any activity preempted by State or federal law.

(b) Section 36.404 shall not apply to:

(1) Noise associated with routine property maintenance used either in part or in whole for residential purposes, provided activity takes place between 7 a.m. and 8 p.m. on any day except Sunday or between 10 a.m. and 8 p.m. on Sunday.

(2) Equipment associated with agricultural operations, provided that each piece of equipment and machinery powered by an internal-combustion engine is equipped with an appropriate muffler and air intake silencer in good working order and one of the following applies:

(A) Operations do not take place between 7 p.m. and 7 a.m. of the following day.

(B) The operations and equipment are utilized for the preparation, planting, harvesting, protection or salvage of agricultural crops during periods of potential or actual frost damage or other adverse weather conditions.

(C) The operations and equipment are used for agricultural pest control in accordance with regulations and procedures administered by the County Department of Agriculture.

SEC. 36.418. RESPONSIBILITY FOR ENFORCEMENT.

The Sheriff shall have primary responsibility for enforcing sections 36.405, 36.407, 36.411, 36.412, 36.413, 36.414 and 36.415. When this chapter requires measurements to enforce these sections, the noise control officer shall assist the Sheriff. The noise control officer shall have primary responsibility for enforcing all other sections of this chapter. Pursuant to Penal Code section 836.5, a person authorized to enforce this chapter may arrest a person without a warrant if he or she has reasonable cause to believe that the person has committed a misdemeanor in his or her presence that violates this chapter.

SEC. 36.419. ADDITIONAL REMEDIES.

The noise control officer may order a person to cease violating any section of this chapter that the noise control officer enforces. The noise control officer may, in addition to using any remedy provided in section 11.121 of this code, summarily abate a public nuisance caused by any act that violates this chapter if the noise control officer determines there is an immediate threat to the health or safety of any person.

SEC. 36.420. FALSE STATEMENT.

No person shall knowingly provide false information, either orally or in writing, to the noise control officer related to any matter within the noise control officer's jurisdiction.

SEC. 36.421. REPRODUCTION OR ALTERATION OF DOCUMENTS.

No person shall reproduce or alter any document issued by the noise control officer or required by this chapter, for the purpose of evading, attempting to evade or violating any requirement of this chapter.

SEC. 36.422. DISPLAY OF PERMIT, VARIANCE OR OTHER DOCUMENT.

Any permit, variance or other document that authorizes any activity regulated by this chapter shall be displayed or maintained on the property or at the location where the activity is occurring.

SEC. 36.423. VARIANCES.

(a) A person who proposes to perform non-emergency work on a public right-of-way, public utility facility, public transportation facility or some other project for the benefit of the general public, who is unable to conform to the requirements of this chapter may apply to the County for a variance authorizing the person to temporarily deviate from the requirements of this chapter.

(b) The noise control officer shall only grant a variance if the officer makes findings that the applicant's proposed activity cannot feasibly be done in a manner that would comply with this chapter and the applicant has no other reasonable alternative available.

(c) When evaluating a request for a variance the noise control officer shall determine the impact any noise that does not comply with the limits of this chapter will have on each property likely to be affected by the noise. The evaluation shall include the uses on each property on which the non-complying noise will be received, what activities will be impacted on the property and the duration of each impact. The evaluation shall also include the value to the community of the work being done by the applicant, the cost to the community if the applicant is unable to perform the work, the cost to the applicant for mitigating the non-complying noise and any cost to the occupant of the impacted property during the time the period of the impacted property will be subject to the non-complying noise.

(d) If the noise control officer grants a variance under this section the variance may impose time limitations on the non-complying activity and may include mitigation measures that the applicant is required to adopt.

SEC. 36.424. APPLICATION FOR VARIANCE.

An applicant for a variance shall file an application with the noise control officer on a form provided by the officer. The application shall not be deemed complete until the

applicant provides all information required by the application and any supplemental information requested by the noise control officer.

SEC. 36.425. REQUEST FOR DUPLICATE VARIANCE CERTIFICATE.

A person who loses the certificate issued by the noise control officer that grants a variance shall request a duplicate certificate from the noise control officer within 10 days after the certificate is destroyed, lost or defaced.

SEC. 36.426. ACTION ON APPLICATION.

(a) The noise control officer shall review an application for a variance to determine if the applicant has provided all information necessary to render a decision on the application. If the application is not complete, the noise control officer shall notify the applicant within 15 days from the date the application was submitted what additional information the applicant needs to provide to make the application complete. If the applicant does not provide the additional information within 15 days of the notice the noise control officer shall deny the application. Within 30 days after receiving a completed application the noise control officer shall deny, approve or grant conditional approval of the request for a variance and notify the applicant in writing of the action taken.

(b) If the noise control officer denies the request for a variance the notice of denial shall state the reasons for the denial. If the noise control officer conditionally approves the variance request the notice of conditional approval shall clearly state the conditions and the reasons for the conditional approval.

(c) An applicant may deem a variance denied if the application has not been acted on within 30 days after the application was submitted or within 15 days after providing additional information requested by the noise control officer, whichever is later.

SEC. 36.427. FAILURE TO COMPLY WITH CONDITIONS.

If a person granted a variance fails to comply with a condition of the variance or this chapter the noise control officer may suspend the variance until the person complies or may revoke the variance.

SEC. 36.428. APPEALS.

A person may appeal a decision of the noise control officer by filing a notice of appeal with the Clerk of the Board of Supervisors (Clerk) and paying the appeal fee for the appeal of an administrative decision, as provided in section 362 of the County Administrative Code, within 15 days after the noise control officer:

(a) Serves a notice of denial or conditional approval of a variance or the date a variance request is deemed denied.

(b) Serves a notice of suspension or revocation of a variance.

SEC. 36.429. CONTENTS OF NOTICE OF APPEAL.

A notice of appeal to review a denial or conditional approval of a variance shall include a copy of the variance application, a copy of the notice of denial or conditional approval and the reasons for the appeal. A notice of appeal of a suspension or revocation of a variance shall include a copy of the variance, a copy of the noise control officer's notice of suspension or revocation and the reasons for the appeal. The appellant shall not be allowed to raise any grounds for appeal not contained in the notice of appeal.

SEC. 36.430. DISMISSAL OF APPEAL.

The appellant may dismiss an appeal at any time before the appeal hearing by filing a written notice of dismissal with the Clerk with a copy to the noise control officer.

SEC. 36.431. HEARING OFFICER.

All appeals filed under this chapter shall be heard by a County hearing officer appointed pursuant to sections 650 et seq. of the County Administrative Code. The Clerk shall assign the matter to a hearing officer on a rotating basis from the list of appointed hearing officers.

SEC. 36.432. SCHEDULING HEARINGS.

The Clerk shall schedule a hearing within 20 days after receipt of the notice of appeal and serve the notice of hearing on the appellant and the noise control officer. The notice shall provide the date, time and location of the hearing.

SEC. 36.433. HEARING PROCEDURES.

An appeal hearing authorized by this chapter shall be conducted as follows:

(a) Every witness before testifying shall take an oath or make an affirmation.

(b) The noise control officer shall present evidence that explains why the variance was denied, approved conditionally, suspended or revoked.

(c) The appellant shall present evidence that supports his/her contention that the noise control officer's determination denying, conditionally approving, suspending or revoking the variance was erroneous.

(d) Each party shall have the right to: call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues, impeach any witness regardless of which party first called the witness to testify and to rebut the evidence against the party. The noise control officer may call and examine the appellant or any employee or agent of the appellant as a witness during the noise control officer's case in chief or during the rebuttal case. The hearing officer may examine the appellant or any of the appellant's employees or agents as if under cross-examination.

(e) Strict rules of evidence shall not apply. Evidence that might otherwise be excluded under the Evidence Code may be admissible if the hearing officer determines that it is relevant and of the kind that reasonably prudent persons rely on in making decisions. All rules of privilege recognized by the Evidence Code, however, shall apply to the hearing. The hearing officer shall exclude irrelevant and cumulative evidence.

(f) The hearing shall be conducted in English. If the appellant or any of appellant's witnesses require an interpreter the appellant is responsible to provide a State certified interpreter at appellant's expense.

SEC. 36.434. CONTINUANCES.

The hearing officer may grant a continuance requested by either party for good cause.

SEC. 36.435. DECISION.

The hearing officer shall issue a written decision with five days after the hearing is concluded and file it with the Clerk. The decision shall affirm, modify or overrule the noise control officer's decision that was appealed. The decision shall state the reasons for the hearing officer's decision. The Clerk shall serve a copy of the decision on the appellant and provide a copy to the noise control officer. The decision shall be effective after it has been served by the Clerk.

Section 2: Effective Date. This ordinance shall take effect thirty (30) days after its adoption. Within fifteen days after the date of adoption of this ordinance, a summary shall be published once with the name of those members voting for and against the same in the newspaper of general circulation published in the County of San Diego.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of San Diego this 10th day December, 2008.