



THE CITY OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Rev 12/2011

Bureau of Environmental Compliance
59-17 Junction Boulevard, 8th Floor, Flushing, New York 11373

APPLICATION FOR A VARIANCE FROM THE DECIBEL LIMITS
FOR COMMERCIAL MUSIC ESTABLISHMENTS

Pursuant to Section 24-231(d) of the Administrative Code and Chapters 29 and 32 of Title 15 of the Rules of the City of New York, the Department of Environmental Protection ("DEP") has established the following requirements to obtain a variance from strict compliance with the decibel limits set forth in subdivision a of §24-231 of the Code.

- 1. The commercial music establishment or music enterprise was in existence and was operating at the same location prior to the date of enactment of §24-231 of the Code; and
2. The owner of the subject commercial music establishment or enterprise submits sufficient evidence or data to the Department showing that strict compliance with such decibel levels would cause practical difficulties or unnecessary hardship due to the physical condition of the premises or zoning district conditions, including irregularity in lot size characteristics and zoning changes. Such evidence or data shall be submitted in accordance with subdivision b of this section.

APPLICATIONS FOR A VARIANCE SHALL INCLUDE THE FOLLOWING DATA AND BE SUBMITTED IN THE FOLLOWING MANNER:

Name of Applicant: _____

Name of Commercial Establishment: _____

Address of Commercial Establishment _____
Address Number

Borough ZIP Block Lot BIN

Phone Number for Applicant: _____

WHAT TO SUBMIT WITH THIS FORM

- Decibel measurements demonstrating that such establishment or enterprise is currently in compliance with the decibel limits that were previously set forth in §24-241.1 of the prior Code.
A written report to the Department certified by an approved Noise Consultant to be able to fill out the variance form. This form shall be retained by the applicant and be acceptable to the Department. Please see the DEP website for the requirements to be an approved noise consultant at http://www.nyc.gov/html/dep/pdf/noise_consultant_form.pdf. Such report shall include, but not necessarily be limited to, the following information and documentation:
i. A certification that strict compliance by the subject commercial music establishment or enterprise with the decibel levels in subdivision a of §24-231 of the Code will result in a substantial hardship due to site conditions or limitations.
ii. A description of all proposed permanent improvements and modifications to be performed upon the subject commercial music establishment or enterprise to meet the intent of §24-231 of the Code to practically minimize noise emanating from the location. Such description shall include an estimate of the cost of such improvements and a timetable for their completion.
iii. All sound level measurements taken at locations within the two closest receiving properties abutting the establishment and/or in alternative locations specified by the Department. All reported measurements shall be performed in accordance with ANSI standards as indicated in §24-231 of the Code and using an ANSI compliant meter operating in the A and/or C weighted scales and/or third octave bands.

- iv. A description of the method by which the maximum allowable amplified sound level shall be permanently set within the subject commercial music establishment or enterprise. The sound levels shall be measured in the A and/or C weighted scales and/or third octave bands.
- An application for the continuation of an existing variance for a commercial music establishment or enterprise located on the same block and lot and the same size as a previous such establishment or enterprise must include competent evidence, in a form acceptable to the Department, that 51% of the outstanding shares as of the date of such application are held by the same person or persons who owned the entity as of the date of enactment of the Noise Code, December 29, 2005. If the subject entity is a corporation, such evidence shall include, at a minimum, corporate records, certified in a manner acceptable to the Department, demonstrating that at least 51% of the voting securities of such entity were owned as of the date of such application by the same person or persons owning at least 51% of such voting securities as of December 29, 2005.

VARIANCE LIMITATIONS

- (1). A variance granted under this section to an applicant/owner of a commercial music establishment or enterprise shall be a one-time variance only.
- (2). A variance granted under this section shall only be applicable to the business for which it is issued, and shall not be transferable to a new owner in accordance with subdivision d of §24-231 of the Code and paragraph (4) of subdivision b of this section. Any change in ownership, as defined in paragraph (4) of subdivision b of this section, of a commercial establishment or enterprise, shall automatically void the variance. A change in the size or location of the commercial establishment or enterprise, or a change in the type of business shall also negate the variance.
- (3). A change in the size or location of the music establishment or enterprise from its original size or original location prior to the enactment of §24-231 of the Code shall negate any right of the establishment to apply for a variance.
- (4). In granting a variance, the Commissioner may impose such terms and conditions as he or she deems necessary to carry out the intent of §24-231 of the Code to minimize noise emissions from the location. Violation of the conditions of any variance shall be deemed to be a violation of subdivision d of §24-231 of the Code.

APPLICANT'S CERTIFICATION

Please be advised that a violation of the terms of the variance by the establishment shall constitute a violation of §24-231 of the Code, where applicable, and shall result in the immediate cancellation of the variance. In addition, DEP reserves the right to request additional information from the applicant as necessary to complete the variance review.

I _____ certify that the information contained on this form and the supporting documentation submitted is accurate and true and that a certified noise consultant was used when preparing the supporting documentation requested.

Signature

_____ Date

Please complete the form and include a cover page listing the supporting documentation that is being submitted and mail to:
 Alyssa Preston
 Bureau of Environmental Compliance
 Department of Environmental Protection
 59-17 Junction Boulevard
 8th Floor
 Flushing, NY 11373