



## POSITION STATEMENT ON AMENDING THE NOISE ORDINANCE IN BEND

*This document summarizes and updates BNC's White Paper on Noise and its Recommendations on Bend's Noise Ordinance, both of which are available at the web site below.*

### **Bend's noise ordinance is out-of-line with other cities**

As Bend grows up, its policy infrastructure needs to grow up with it. The Bend Neighborhood Coalition believes that growth and livability aren't incompatible, but to keep both goals in sight, Bend needs to learn from best practices in other cities and update certain policies.

Bend's noise ordinance falls short of the best practices used elsewhere. This has encouraged some in the community to exploit policy gaps; together with permissive interpretations of some standards, the result has been several ongoing conflicts that infringe on the rights of property owners to the peaceable enjoyment of their homes or businesses and require expensive city resources to manage.

Bend has set decibel limits that exceed those of most cities, including Austin, Texas, "the live music capital of the world". Sound levels in Bend's residential zones can be twice as loud as in Portland, Salem, and Corvallis, without justification. While more of Bend will be zoned mixed use going forward, there are no decibel standards for mixed use zones.

In Bend, almost all applications to be excused from complying with sound standards are routinely approved. These variances benefit the private interests of a few companies at the expense of their neighbors, including nearby businesses, and often affect the same neighborhoods repeatedly, as there are no standards regulating the proximity, frequency, or duration of events granted noise variances.

Bend allows virtually any commercial or mixed use property to become an event venue, regardless of its ability to comply with the noise ordinance. And, event organizers know there is almost no enforcement — Bend places the burden of monitoring compliance on the public and the responsibility of enforcement on a police force with more important duties.

### **Best practices**

Research on noise ordinances in other cities (see the Addendum), including those known for having vibrant music scenes, points to policies that incorporate the following elements:

- 1) *Use of both a nuisance standard (no noise disturbances) and objective standards (measured with a decibel meter).* Note that decibels are measured on a logarithmic scale, so that a 10 point difference represents a doubling in perceived volume.
- 2) *Measurement at a specified point.* Some cities evaluate sound levels at the property line of the source, while others use a particular distance from the source. In practice, Bend measures at the property line of a person actively complaining, which can be at any distance, near or far. This makes it difficult for event organizers to know whether they are in compliance.
- 3) *Regulation of outdoor music venues.* Many cities require a permit for outdoor amplified music. This creates an opportunity for a trained sound technician to proactively evaluate a venue and suggest ways to bring sound levels into compliance. It also generates revenue to fund enforcement.

- 4) *Use of trained code enforcement staff.* Monitoring and enforcing the noise code commonly falls to a staff or contract sound technician or to a designated noise control officer. Just as professionals enforce food safety standards in restaurants, a sound technician has both the credibility and authority to interact with event staff with the goal of ensuring compliance. This makes enforcement less adversarial, but more effective, as organizers know they will be monitored regularly and fairly.
- 5) *Establishment of entertainment districts.* With relaxed standards for sound levels and hours, these areas add to the vibrancy of a city by providing destinations for locals and tourists where there will be a concentration of entertainment businesses. Apart from the amphitheater in the Old Mill District and the streets of downtown, Bend lacks appropriate venues for outdoor music. The result has been a steady intrusion of restaurant patios and beer gardens immediately adjacent to residential properties, and the staging of large outdoor concerts, literally across the street from homes.

## Proposed changes to the Bend noise ordinance

The Bend Neighborhood Coalition supports revisiting the noise ordinance (something that was promised when it was last revised five years ago) and making specific changes to bring it into line with practices in other cities. We encourage the City Council to consider the following:

- 1) Reduce the decibel levels specified in section 5.50.020(A) for residential properties from 65 dBA daytime and 60 dBA nighttime to 55 dBA at all times. This would match the daytime residential limit in Portland, Salem, and Corvallis, and the nighttime standard in Salem and Corvallis. Portland's nighttime limit is 5 dBA lower. These levels would make the decibel table in 5.50.020(A) consistent with the "plainly audible" standard in 5.50.025(B)[7], since 55 dBA is considered "not plainly audible". (See the Addendum for standards in several other cities.)
- 2) Add a standard for mixed use zones of 65 dBA daytime and 60 dBA nighttime. Since mixed use zones may contain both commercial and residential units, this is a compromise that acknowledges that residents in such areas may be exposed to louder sounds than in purely residential neighborhoods, while businesses located there may have to restrict their activities more than in commercial zones.
- 3) Designate the "nearest property zoned and occupied as a residence or noise sensitive unit" as the point at which amplified sound levels are to be evaluated. (See section 5.50.025(B)[7]). This clarification provides a common reference point for both event organizers and whoever has enforcement responsibility.
- 4) Delete the reference to nighttime hours from section 5.50.025(B)[7]. Using speakers or amplifiers in excess of the decibel levels in 5.50.020(A) should be prohibited at all times.
- 5) Delete the reference to commercial establishments and change the word "shall" to "may" in the last sentence in section 5.50.025[7]: "~~If the amplified noise originates from a commercial establishment,~~ a A noise meter reading shall may be taken as additional evidence relating to the alleged violation." Requiring a meter reading has created enforcement problems for the police in situations where sound is "plainly audible", but where the officer responding to a complaint does not have one of the two decibel meters owned by the city. Also, the requirement establishes a different enforcement standard favoring businesses over private parties. There is no justification for the difference.
- 6) Change the word "permits" in section 5.50.035 to "variances".
- 7) Add language that addresses the following conditions to section 5.50.035(B)
  - a) Proximity — within 250 feet of a residential zone, variances to daytime decibel levels should seldom be issued and no variances should be issued to nighttime decibel levels
  - b) Frequency — seldom issue variances for events held within 30 days of another event that impacts the same neighborhood
  - c) Duration — limit variances to decibel levels to six hours, and require that a strong case be made for a longer period

## **Proposed changes to enforcement**

- 1) Monitoring — shift primary responsibility for monitoring from residents to a city sound technician who will work with permit and variance holders proactively to ensure compliance, and then monitor events with a decibel meter.
- 2) Responsibility — authorize the city sound technician to issue citations based on routine monitoring; the police department should only be involved in responding to citizen complaints, which should diminish in number.

## **Proposed outdoor music venue permits**

In either a second phase of amendments to the noise ordinance or by adding a separate code section, the City should adopt an approach to outdoor music venues modeled on the Austin, TX code, with two types of permits. These permits generate revenue to fund monitoring and enforcement efforts.

(See: <http://www.austintexas.gov/departmentsound-permits>)

- a) Temporary Event Sound Permit: 1- to 4-day permit; sound evaluation fee, plus permit fee; sound levels in section 5.50.020(A) apply, unless a variance is issued under section 5.50.035:
  - i) Within 100' of a residential property: no permits
  - ii) From 100' - 600' of a residential property: hours limited to 10 am to 8 pm Sun-Thur; 10 am to 10 pm Fri-Sat
  - iii) Beyond 600' of a residential property: 10 am - 2 am
  - iv) No more than one permit within 30 days
- b) Outdoor Music Venue Permit: annual permit for restaurant patios, beer gardens, and other settings with regular outdoor amplified music; Sound Impact Plan required; sound evaluation fee, plus notification fee, plus permit fee; must comply with Good Neighbor Policy; sound levels in section 5.50.020 apply; the granting of variances would be subject to the four conditions for a Temporary Event Sound Permit under the previous paragraph

## **Proposed long-term plan for entertainment districts**

Bend's long-range planning needs to include a vision for one or more areas where outdoor amplified music and late-night entertainment is concentrated and allowed to prosper under more relaxed guidelines. Entertainment districts of various sorts have been successful in other cities and would help in Bend by encouraging the relocation of activities that are incompatible with nearby residential areas and college campuses. Getting the right activities in the right place is key to compatibility.

Visit Bend could help with this effort by using some of its resources for long-range planning to explore this and other ideas to accommodate more tourists in the future without generating additional conflicts. This might include building an outdoor performance facility to anchor one of the entertainment districts; such a facility should have adequate parking and temporary food services to accommodate from a few hundred to a few thousand people. The Bend Metro Park & Recreation District would also be a natural partner in this effort.

Areas that have been discussed as potentially appropriate for entertainment districts include two opportunity areas identified in the UGB planning process: the Kor-Pine area and the Bend Central District (between Downtown and Third Street).

## Addendum: Practices in Other Cities

- Los Angeles: not audible 150 feet beyond the property line of the source in a residential district
- Miami, Omaha, and Buffalo: not plainly audible at 100 feet
- Detroit: no sound audible beyond 100 feet; no sound created less than 250 feet from a residence
- Seattle, Chicago, Green Bay, Indianapolis: not plainly audible at 75 feet
- Atlanta: not plainly audible at 50 feet in residential, commercial, or industrial zones
- New Jersey: not plainly audible at 50 feet from 8 am to 10 pm; not plainly audible at 25 feet from 10 pm to 8 am
- Albuquerque: not plainly audible at 25 feet
- Hammond, IN: not plainly audible at the property line at all hours
- Nashville, TN (“Music City, USA”): no amplified sounds that are plainly audible at the boundary line of the nearest residentially occupied property
- Salt Lake City: not plainly audible at the listener property line between 10 pm and 7 am; not plainly audible on public property at 50 feet between 7 am and 10 pm
- Salem and Corvallis, OR; Burlington, VT: not plainly audible everywhere between 10 pm and 7 am
- New Orleans: maximum of 80 dBA at 55 feet from the source
- Portland, OR and Charlotte, NC: maximum of 55 dBA in residential zones during daytime hours; maximum of 60 dBA in other areas; 50 dBA nighttime everywhere
- Kenosha, WI: no noise disturbance from an amplified device in residential zones between 10 pm and 8 am; no noise disturbance on public property between 5 pm and 8 am
- Orlando: requires permits for outdoor speakers; restricts use to daytime hours; at least 1,000 feet from noise sensitive zones
- Austin (“The live music capital of the world.”): requires a permit for any device that can be heard in any public place; no permits within 100’ of a residential property; sound generally limited to 85 dBA at the property line of the source; hours depend on distance from nearest residential property
- San Jose: requires a permit for any amplified sound projected out from buildings or outdoors
- Hawaii: limits bass sounds to 60 dBC during daytime hours and 50 dBC at night in any land use zone

### Distance from the source required to meet sound level limits

**Decline in decibel level as distance increases**

10'	20'	40'	80'	160'	320'	640'	1,280'	2,560'
120	114	108	102	96	90	84	78	72
115	109	103	97	91	85	79	73	67
110	104	98	92	86	80	74	68	62
105	99	93	87	81	75	69	63	57
100	94	88	82	76	70	64	58	52
95	89	83	77	71	65	59	53	47
90	84	78	72	66	60	54	48	42
85	79	73	67	61	55	49	43	37
	-6	-12	-18	-24	-30	-36	-42	-48
	= current Bend daytime residential limit of 65 dBA							
	= proposed residential limit of 55 dBA							