



WHITE PAPER ON NOISE IN BEND, OREGON WITH RECOMMENDATIONS

Executive Summary

The Bend Neighborhood Coalition:

The Bend Neighborhood Coalition is a non-profit organization formed by Bend residents dedicated to the objective of “keeping Bend livable for those who live here.”

As Bend pursues the 2030 goal of a well-planned city, how can we maximize livability during a period of rapid growth, a desire to increase the diversity of the economy, the addition of a four year university campus, and a State mandate to increase density?

We chose noise as our first issue to research, especially noise being generated in commercial areas that are next to (abut) residential areas, but also within residential areas.

Major Findings:

- Bend’s Noise Ordinance sets limits on noise that are substantially higher than those in Salem, Corvallis, and Portland Oregon, as well as Austin, Texas and Charlottesville, Virginia, two cities with universities and vibrant music scenes.
- Bend routinely issues permits that allow event organizers and establishments to exceed the noise limits, not only for special events like October Fest or Munch and Music, but for outdoor patios of restaurants or bars that abut residential neighborhoods – greatly impacting residents. Other cities are more selective.
- Certain Bend zoning issues increase the likelihood of generating conflict over noise.

Major Recommendations:

- That the City Council create a committee to review the Noise Ordinance, including noise limits, and bring those limits in line with other cities.
- That this committee also review the newly issued criteria used to approve or deny permits to exceed noise limits. Approving these permits should be the exception, not the rule.
- Bend needs to draft an enforcement protocol so that the city, police, and residents know how to proceed to initiate, respond to, and follow up on complaints.
- Bend should use zoning to encourage entertainment venues, especially outdoor venues that use amplified music, to locate where they are less likely to negatively impact residential neighborhoods. *End Executive Summary*

The Bend Neighborhood Coalition (BNC)

We are a non-profit organization formed by Bend residents dedicated to the objective of “keeping Bend livable for those who live here.”

BNC hopes to bring new ideas to the table, as well as best practices from other cities, as Bend pursues the 2030 goal of a well-planned city. How can we maximize livability during a period of rapid growth, a desire to increase the diversity of the economy, the addition of a four year university campus, and a State mandate to increase density?

The Noise Challenge

As Bend grows, adds a four year university campus, increases mixed-use zones, and achieves greater density, there is the potential for increased conflict over noise and related impacts among residents and between residents and commercial and industrial enterprises. Bend can learn how to manage this looming issue from other cities — both those that haven’t managed this issue well and face neighborhood decay and fleeing residents, as well as those that have come up with workable solutions.

What is noise and how do Bend and other cities control it? Noise is often defined as unwanted sound: the kind of sound that has physical effects, such as hearing loss; physiological effects on health, such as increased stress and blood pressure; and psychological effects, such as distraction and annoyance.

The Bend Comprehensive Plan provides overall policies, which includes a stated purpose to:

... organize and coordinate complex interrelationships between people, land, resources, and facilities to meet the future needs of the citizens and to protect the ***livability*** of the community... (emphasis added)

Existing Noise and Related Codes

Cities use Noise Ordinances and special event procedures, as well as designated Land Use Districts with permitted uses and design standards, to control noise and promote compatibility within and between zones. In Bend, these are included in:

1. **Bend Development Code (BDC)**: Chapter 2 — Explains the Land Use Districts and the various “allowed uses” for each zone type, which is another way of saying, the kinds of business activities allowed in certain zone designations. In addition, Chapter 3.6.4 - Temporary Uses, includes some types of events and activities.
2. **Bend Code: Title 5 – Public Protection: Noise Code / Noise Permitting Process**: Chapter 5.50 of the Bend Code (Bend’s Noise Ordinance) regulates the decibel limits that are permitted based on zoning type (residential, commercial, or industrial) and time of day (daytime hours are 7 am to 10 pm; nighttime is from 10 pm to 7 am).

3. **Bend Code: Title 7 Businesses; Special Events Permit Process**: Chapter 7.40 — defines Special Events as those expecting over 150 people, open to the public, and held on publicly-owned land or City Right of Ways.

Issues

The Bend Neighborhood Coalition believes that the current Code is failing to curb noise in certain areas, and will be woefully inadequate to do so in the future.

For example, many residents abutting commercial areas are currently subjected to noise levels and related impacts that they believe are unreasonable. There are multiple dimensions to the issue:

- When Bend noise limits were established in 2012, they were set “a bit higher than most with the intent that it will be easier and more simply enforced.”
- Bend routinely approves permits for events to exceed the noise levels allowed by Bend’s noise ordinance, often frequently and repeatedly in the same neighborhoods, resulting in very loud events and other associated impacts including parking issues, increased traffic, garbage and litter, offensive public behaviors, public drunkenness and rowdiness, and other alcohol related issues.
- Enforcement is not easy: measurements of complaints about noise coming from commercial establishments during nighttime must be done by police officers using a noise meter; the police are busy and may receive multiple complaints on the same day; not all police cars have a noise decibel meter, and the meters may not be calibrated correctly. In some cases the officer has had to leave, return to the station to pick up a meter, and then return, or wait for another patrol car with a meter; noise calls are a low priority, with an average response time of over 24 minutes, sometimes well after the opportunity to accurately observe and document the event.
- Documentation of complaints is inconsistent: the address of the person complaining is generally, though not always recorded, but the source of the noise is rarely noted.
- There is no documentation of complaints to guide future permit approvals if no citation is issued for infractions, and very few citations have ever been issued.
- Using the dBA standard of measurement may not accurately reflect the impact of bass notes when the noise level is high.
- Underlying zoning increases potential for ongoing conflict around noise by legally permitting a business activity (known as a permitted use) or event that by its very nature is not compatible with the abutting residential uses.

In the future, noise complaints are likely to increase with the arrival of several thousand OSU-Cascades students, especially within residential and mixed-use zones. Additionally, driven by a State mandate, noise by its very nature will be intensified as the City becomes densified.

Background on the Bend Noise Ordinance

The current version of the Bend Noise Ordinance was adopted after lengthy discussions in early 2012 about how best to amend Chapter 5.50 of the Bend Code to respond to concerns about noise. “The committee worked to clarify where and how noise is measured and to identify appropriate decibel levels to ensure that residents won’t be disturbed by noise in their homes after 10:00 pm.” The new Code was also supposed to be clearer, easier to understand, and allow for enforcement.

Decibel Limits

Chapter 5.50 of the Bend Code regulates the decibel limits that are permitted based on zones (residential, commercial, or industrial) and time of day (daytime is between the hours of 7 am and 10 pm; nighttime is between the hours of 10 pm and 7 am). The Bend Code is similar to those of other cities in that it prohibits similar types of noise above certain limits during daytime and nighttime hours and uses a period of 10 pm to 7 am (commonly used in Oregon) to protect residents during normal sleeping periods.

We compared noise limits between a source of noise in a commercial zone and the receiver in a noise sensitive unit (such as a residence) to those in Portland, Corvallis, and Salem, as well as Charlottesville, Virginia and Austin, Texas, two cities with universities and vibrant music scenes. Bend’s limits are higher. Note that dBA is a logarithmic scale, so that a 10 point difference is a very large difference (at least twice as loud).

City	Daytime dBA	Nighttime dBA
Bend	70	65
Portland	60	55
Corvallis	*	Not plainly audible
Salem	55	50
Charlottesville, VA	65	55
Austin, TX	85 at commercial property line	Not audible at commercial property line

** not plainly audible 50 feet from source
(55 dBA is considered the same as “not plainly audible”)*

We also compared noise limits within residential zones. Bend is again at the upper end of decibel limits among the same cities.

City	Daytime dBA	Nighttime dBA
Bend	65	60
Portland	55	50
Corvallis	*	Not plainly audible
Salem	Not plainly audible	Not plainly audible
Charlottesville, VA	65	55
Austin, TX	75	Not plainly audible

** not plainly audible 50 feet from source*

(55 dBA is considered the same as “not plainly audible”)

We note that the nighttime dBA limits for Bend (65 between commercial and residential and 60 within residential) are not in line with 5.50.025 B 7 which states it is prohibited to use amplified sound “that creates noise that is plainly audible at the property line” of a noise sensitive unit. Both 65 and 60 dBA are considered plainly audible in all references used for this paper for nighttime limits in residential neighborhoods.

Variations to Exceed Limits

All cities allow numerous exceptions to the decibel limits. For example, exceptions under the Bend Code include police sirens, construction activities, organized sporting events such as high school football games, and amphitheatres seating more than 5,000. In addition, all cities have a permit process to seek a variance to normal noise limits. In Bend, “the City Manager may also issue a permit for a concert or similar event allowing noise otherwise prohibited by this chapter... The permit may be for a single concert or event or for a concert series.” One might think of First Friday Art Hop, Munch and Music, and Winterfest, among others.

In Bend, of the 44 permit applications in 2015, 40 were approved and four were denied. Even though some were denied, several of these concert events occurred anyway – challenging enforcement, and creating other impacts (e.g., at Century Center). Several of the approved permits were for multiple events. Many were issued to restaurants and bars for outdoor entertainment as a routine part of their business. Noise permits or variances are issued to exceed the normal decibel limits of the noise ordinance, in some cases up to 80 decibels. They are permits TO BE LOUD, and in some cases to be loud for many hours. No permits were denied in 2014 or 2013.

After further complaints from residents, on February 1, 2016, City Manager Eric King sent a letter to the River West Neighborhood Association board describing “some changes in our noise permitting process.” The letter stated, “in 2015, the City of Bend heard your concerns about

how amplified sound from events in your neighborhood impacted your quality of life. In response, we drafted Administration Policy 03-18, City Manager Criteria for Consideration in Granting/Denying Request for Noise Permit.”

Bend’s new criteria for determining whether to approve a permit have not been tested, were not created with public input, and put the burden on citizens to argue for denial. They do not appear to be very restrictive, unless there have been past problems. Attachment A provides a copy of the criteria.

Other cities have taken more restrictive approaches. Salem has permit criteria that state:

Granting the Permit will not be unreasonably detrimental to the public welfare. In determining whether the permit would be “unreasonably detrimental to the public welfare,” the Health Officer shall consider such factors as the potential impacts on businesses and noise sensitive properties within 150 feet of the planned sound source, the time of day, the day of the week, the proposed type and amount of amplification to be used and any secondary noise consequences.

Corvallis can issue a permit “if the sound will not be audible for over 150 feet from the speaker.”

Both Charlottesville and Austin have recently adopted more restrictive language for permits that impact residential properties. The Austin language states:

“The accountable official may not issue a permit for use of sound equipment within 100 feet of property zoned and used as residential.” Beyond 100 feet, but within 600 feet, there are restrictions that vary by day of the week and require neighborhood agreement.

Austin also restricts permits impacting residential areas to one every 30 days per organizer. San Antonio, TX prohibits amplified music on its popular Riverwalk.

The code in San Luis Obispo (home of Cal Poly State University) states:

“Notwithstanding any other provision of this chapter, and in addition thereto, it shall be unlawful for any person to willfully or negligently ... (produce) any noise which disturbs the peace and quiet of any neighborhood or which causes any discomfort or annoyance... No permit shall be issued for any activity that may violate this section.”

Enforcement

Bend does not require the use of sound measurements to enforce noise limits, except relating to an alleged violation originating from a commercial establishment during nighttime hours. However, since Bend’s noise ordinance uses dBA levels to set limits, it is not clear how enforcement would occur during daytime without using a noise meter. Some cities use wording such as “plainly audible,” with Charlottesville moving from the latter to the former based on a Virginia Supreme court ruling. Both Charlottesville and Austin measure decibels at the property line of the business. Bend measures decibel levels at the property line of the person reporting the concern.

Most cities, including Bend, use A weighting when measuring decibels. However, some articles make the case that when measuring entertainment noise where sound levels are high and the transmission of bass noise can be a problem, C weighting may be more useful. Measuring devices are available for purchase that measure either only A, or C or both A and C. Prices range from \$200 to \$400 and up per unit for a Type II meter. Portland's noise ordinance includes an even more sophisticated "Permitted Octave Band Sound Pressure Levels" to augment its A weighting sound limits. At a council meeting work session in March of 2016, Police Chief Jim Porter made the case that C weighting measurement devices were very expensive (several thousand dollars) and required calibration and downloading of data to a computer (back at the station) making use of these meters impractical in management or citation situations.

Background on Zoning and Permitted Uses

The basic question is, "How should Bend encourage entertainment venues, especially outdoor venues that use amplified music, to locate where they are less likely to negatively impact residential neighborhoods?" Currently, there are no large venues besides Les Schwab Amphitheater. Smaller, but no less-loud, venues are springing up next to residential neighborhoods — the Galveston corridor being a prime example.

Bend also has businesses operating in commercial and mixed-use zones that don't appear to be in line with the intent of permitted uses within these zones. At what point do events, noise permitted or not, exceed the underlying land use intent for the property being used? If a property was permitted as a restaurant, but has an patio area that is operating as an outdoor "entertainment and recreation" use "not enclosed," is this a legal use of the property?

What about concerts or other events that are promoted by for-profit businesses that may not even be tenants at a property, often paying the landowner to use parking areas with an original land use permit with parking requirements appropriate for a restaurant or other existing business? (Often, these noise-permitted events have been further supported with the city providing a temporary liquor license.) These situations are aggravating noise issues in Bend and trampling on the reasons for underlying zoning rules by creating incompatible uses.

Comments

Noise Ordinance and Permit Criteria

The Bend Neighborhood Coalition does not believe that the 2012 update to Chapter 5.50 of the Bend Code (Noise Ordinance) and the new Administrative Policy 03-18 (Criteria for a variance) are working or will work as intended to reduce negative impacts on the quality of life in residential areas for the following reasons:

- 1) Under the Noise Ordinance, decibel limits between residential and commercial zones and within residential zones are too high and it has been routine to provide permits to exceed the already high decibel limits. There are no restrictions on the frequency, duration, or proximity of permitted events that can impact residential areas, nor limits on the days of the week when they might occur.
- 2) The criteria of the Administrative Policy are vague and untested and put the burden of proof on neighbors to come forward to argue for denial. While some criteria, such as “distance/proximity to noise sensitive residential neighborhood” and “input from Neighborhood Association or neighbors” might lead to denial, many criteria relate to past problems which have been difficult to document. For example, an event organizer would only be subject to sanctions if he/she exceeded the higher decibel limits allowed under the permit (which vary from 70 to in one case 85 decibels) or was issued a citation for a previous event, when it appears that City practice is to cajole the event organizer rather than issue a citation. Citations are rarely issued, in fact we know of only one or two over the past two years.

Zoning and Permitted Uses

The Bend Neighborhood Coalition notes that Austin, Texas has moved towards concentrating businesses that rely on music in certain sections of the city and providing them more decibel latitude while, at the same time, adopting very restrictive language for commercial areas that abut and impact residential areas.

Charlottesville, Virginia has adopted new language related to the re-zoning of what it calls a Neighborhood Commercial District (for mixed use). In these areas, it has adjusted its code with respect to setback requirements, height regulations, and buffer regulations. It has also reduced the number of permitted uses to address future noise, traffic, and pedestrian uses and complement the noise ordinance.

Bend has the opportunity, based on projects like the Central Westside Plan, and upcoming changes to the UGB and its required code changes, to take another look at permitted uses within mixed-use and commercial zones, and to think about where outdoor entertainment venues might best be located.

Recommendations:

Code

That the city create a committee to review Bend's Noise Ordinance in line with experience over the past three years and in anticipation of the expansion of the OSU-Cascades campus and increased density. This would include revisiting decibel limits and setting restrictions where commercial and mixed use zones abut residential zones.

For example, Austin has separate permits for temporary music events versus annual outdoor music venues (like a restaurant patio), limiting the former to 4 days and only 4 times per year (at least 30 days apart), while the latter permit is required even if staying within sound levels in the code; exceptions to sound levels and hours are only allowed in two entertainment districts; all permits require a sound impact evaluation (and fee).

Criteria

That the City consider a specific set of modifications (see Attachment A) to the criteria used to approve or deny a variance to decibel limits, including the consideration of underlying zone restrictions.

Enforcement

That a compliance enforcement protocol be drafted so that the city, police, and residents know how to proceed to initiate, respond to, and follow up on complaints. This would include:

- How the police know whether a noise permit has been issued;
- How complaints to the police will be shared with the city staff and vice versa;
- How the data base can capture both the complainant and source of the noise (address or other specific location information);
- Who will have decibel meters and when and how will they be used:
 - e.g., all police cars could be required to have one and use it as soon as arriving (before any "negotiation" with the event sponsor); or only meter-equipped cars might be dispatched to respond to noise complaints;
- The criteria to be used by the police in issuing a citation

Zoning

1. That future zoning changes consider establishing neighborhood compatibility zones that restrict impactful uses for all commercial and mixed uses that abut residential areas:

For example, some cities prohibit amplified music in areas like Bend's commercial convenience zones and on commercial properties within residential zones, and some prohibit issuing noise permits when the source is within a certain distance of a residential zone (about 250 feet is necessary for sound levels from amplified music to fall off to the daytime decibel limits in Bend's noise ordinance; decibel levels decrease 6dBA with every doubling of distance from the source).

As an example of how this might be applied: First, “entertainment” should be defined to include amplified music. Then, within commercial and mixed use districts (see below), “Entertainment and Recreation — not enclosed” would be coded “N”, or, “not allowed” when within 250 feet of a residential zone.

Commercial Uses

Land Use	CB	*CC	CL	CG
Entertainment and Recreation				
– enclosed in building (e.g. theater, fitness facility)	P	P	P	P
– not enclosed (e.g., amusement, outdoor arena)	N	N	C	C

Mixed Uses

(MU and MN proposed 3/29/16)

Land Use	ME	MR	PO	MU	MN
Entertainment and Recreation					
– enclosed in building (e.g. theater)	P	P	C	P	L/C
– not enclosed (e.g., amusement)	P	C	C	C	N

N = Not permitted C = Conditional use P = Outright permitted L = Limited

Caution should be exercised when considering allowing noise producing outdoor activities using Conditional Use process, (designated as “C”); even when conditioned, enforcement is left to the affected citizens and the problem typically continues, often at great expense to staff and police time. Even more serious is the loss of trust in government and continued loss of livability in the affected areas.

2. That the city consider encouraging development of a specific venue or a music district — in addition to Les Schwab Amphitheater — for promoters of music events, in an area that does not abut a residential neighborhood.
3. That the City consider a university district overlay zone to help concentrate student housing and services near the OSU-Cascades campus and avoid the creation of an entertainment zone near the campus.

Attachment A

City Manager Criteria for Consideration In Granting/Denying Request for Noise Permit

Policy No. ADM 03-18

January 22, 2016

Bend Code Chapter 1.450 provides for 'City Manager Authority to Adopt Administrative Regulations, Policies and Guidelines.' All regulations, policies and guidelines adopted by the City Manager shall be consistent with the City of Bend Charter, the Bend Code, and council ordinances.

The following policy conforms to the above stated standards.

A. The following criteria will be used by the City Manager, in his or her discretion, in deciding whether or not to grant a valid request for a noise permit under Bend Municipal Code Section 5.50.035:

1. Distance/proximity to noise sensitive residential neighborhoods or areas that are not noise sensitive.
2. Both pro and con input from Neighborhood Association, if received.
3. Substantiated complaints (e.g., citation issued by police) from prior event at same location; in such event, no noise permit will be granted for a one-year period from time of citation.
4. Evidence of law enforcement concerns from event sponsor or at event location.
5. Number of increased decibels requested and time period requested (e.g., decibel increase before 10 p.m. may be better than extended hours past 10 p.m.).
6. Time of year (e.g., summer hours with longer sunlight may be less intrusive and more likely to be granted).
7. Input from neighbors to whom notice was mailed. Number of responders, and/or repeat responses is not determinative, but is one factor to be considered by City Manager.
8. Receptiveness and sensitivity of business making request to neighborhood concerns and willingness to make adjustments as needed.

B. Conditions which may be imposed on the granting of a noise permit include:

- Right to revoke for any violation.
- Limited hours with decreasing decibels as it gets later in the evening.
- Limiting any amplified sound or requiring prompt decreased amplified sound upon any request by City to do so.
- Limitations on outdoor sound.
- Requirement of responding promptly to police requests for sound reduction based on complaints.

- Indemnity and holding City harmless for any loss of any kind associated with use of permit.
- Permittee to provide his/her own security and monitor to oversee the sound levels.
- Assurance that notice of application has been provided to Neighborhood Association and properties within 500 feet of site.
- Any other condition deemed reasonable by the City Manager under the specific circumstances presented.

BNC Recommendations for Modifying City Manager Criteria

Criteria #1: Distance / Proximity

Add "Permits will seldom be issued for events held within commercial or mixed use zones within 250 feet of residential or noise sensitive units in an adjacent zone."

Criteria #6: Time of Year

Remove this criteria for a number of reasons: Many residents have shift jobs where they must work nights or split shifts necessitating sleep even during daylight hours. This also applies for daytime naps for children and adults and those with illnesses seeking rest in their homes during daylight hours. Also, during the summer, more windows are open, allowing noise to penetrate into homes, and more people cook and eat outdoors at their residences.

Additional Criteria to Add

- **Day of Week**: Weekly or monthly events should be concentrated on particular days of the week (for example, on Friday or Saturday), so that surrounding occupants and residents may have respite from noise can plan for their own events that will allow for normal conversation.
- **Total Number of Events Already Permitted** within a 250 foot radius from the tax lot or lots within a distinct area.
- **Underlying Zoning and Compatibility**: whether the activity is a permitted use in the underlying zone.