



## SUMMARY OF ISSUES WITH BEND'S NOISE POLICIES AND PRACTICES

### What we've learned

1. City staff have allowed permissive interpretations of standards in the noise ordinance.
  - A. The city manager invokes “prosecutorial discretion” in directing the police to take sound readings only at the property of someone complaining. This does not accurately reflect the ordinance, which establishes objective standards and indicates where those standards apply.
  - B. Staff have directed event organizers in mixed use zones to use the highest decibel standard.
  - C. Almost all applications for noise variances are routinely approved; the staff claims they “have to” issue variances to anyone who submits an application and the required fee (subject to review under the city manager’s administrative criteria).
  - D. Public feedback on the administrative criteria was not incorporated, and the city manager has not used his own criteria in situations where they apply, but has redefined terms on an *ad hoc* basis (so that “same location” now means “same business”).
  - E. These variances frequently do not have a community benefit, but favor the private interests of a few companies at the expense of their neighbors, including nearby businesses.
  - F. Variances often affect the same neighborhoods and businesses repeatedly, as there are no standards regulating the proximity, frequency, or duration of events (which are standard criteria in other cities). Variances are routinely granted in locations that are too close to residential properties to ever achieve compliance, even with the higher decibel limit in the variance.
2. Enforcement has almost entirely failed, resulting in many complaints, but hardly any citations.
  - A. The burden of monitoring and attempting to get the noise ordinance enforced falls on the public, which has become fatigued with repeated attempts that go nowhere.
  - B. While the police are responsible for enforcement, noise ranks very low as a priority, so response times average nearly 30 minutes.
  - C. The city only purchased two decibel meters, which are required for sound originating from commercial establishments after 10:00 p.m.
  - D. There is no enforcement protocol (the police car dispatched is likely not to have a meter; no incident number is assigned unless the complainant asks for one; complaints to the police are not forwarded to city hall; etc.).
3. Bend’s noise ordinance falls short of the best practices used elsewhere.
  - A. Sound levels in Bend’s residential zones can be twice as loud as in Portland, Salem, and Corvallis.
  - B. There are no decibel standards for mixed use zones.
  - C. Businesses and non-profits are subjected to the highest sound levels found anywhere.
4. Bend allows virtually any commercial or mixed use property to become an event venue, regardless of its ability to comply with the noise ordinance.
  - A. There is no code defining or regulating event centers.
  - B. Neither the city code nor staff differentiate between a business hosting entertainment for its patrons and someone renting out space (including required parking) to a third-party promoter for large ticketed concerts or competitions.

## Proposed approach to address these concerns

The Bend Neighborhood Coalition suggests a three-phase strategy over three years:

2017: The city council should direct the city manager to implement current policies in a more restrained and balanced manner.

2018: The council should deliberate on and adopt minor changes to the noise ordinance that bring it into line with practices in other cities.

2019: The council should review and adopt new policies that strengthen city code by moving from a complaint-driven approach to a prevention-oriented one (like the Austin model) and by addressing the need for regulation of outdoor event centers.

### I. Changes to administrative implementation

- A. Issue noise variances within 250' of residences or noise sensitive units very judiciously, as compliance within that distance is difficult to achieve (as a matter of the physics of sound); do not allow variances to nighttime hours within 250'.
- B. Require applicants for repeat variances to submit a sound impact evaluation, demonstrating the ability to achieve compliance in advance (via equipment set-up, orientation, use of baffles, etc.).
- C. Limit variances within 600' of residences or noise sensitive units to one per 30 days, and limit hours to 8:00 p.m. Sun - Thur and 10:00 p.m. Fri - Sat.
- D. Limit the duration of variances to 6 hours, except for community events with a special event permit and free admission for the public.
- E. Apply the city manager's administrative criteria (ADM 03-18) as written — i.e., consider proximity, neighbor input, and history; deny variances at the "same location" as a citation within 1 year, regardless of the applicant wishing to use that location; etc.
- F. Inform the police that: 1) decibel meter readings are not required to issue citations in accordance with section 5.5.010; 2) "having a permit" does not mean that any sound level is permissible; 3) sound levels should be evaluated at the nearest residence or noise sensitive unit.
- G. Develop a noise enforcement protocol addressing police training, documentation of complaints, and data sharing between the police and city hall.
- H. Stop the use of temporary occupancy permits to enable large outdoor concerts on property where there has never been a review of such a land use.

### II. Minor adjustments to the Bend noise ordinance

- A. Section 5.50.020(A): Noise Limits (residential and noise-sensitive)
  - Reduce the decibel levels for residential zones from 65/60 dBA 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.
  - 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 says that residents may be exposed to louder sounds than in residential areas, while businesses may have to restrict their activities more than in commercial zones.
  - Delete the reference to "a residence or noise sensitive unit". (See item B.)
- B. Section 5.5.020(B): Noise Limits (businesses and non-profits)
  - Delete this paragraph, which sets much higher decibel limits of 85/80 dBA for businesses and non-profits in all zones.
  - Most cities have a decibel limit for each zone that applies to all properties in the zone. In Bend, the decibel levels in 5.50.020(A) only apply to residences or noise sensitive units, so that 70

dBA, for example, applies to a condo downtown, but not to a business beneath the condo; the business is subject to paragraph B. This difference causes unnecessary confusion and is not understood even by senior staff or the police.

- C. Section 5.50.025(B)[7]: Prohibited Noises (amplified sounds)
- Designate the “property line of the nearest property, other than the property where the noise is generated” as the point at which amplified sound levels are to be evaluated. This provides a common reference point for both event organizers and those with enforcement responsibility.
  - Delete the reference to nighttime hours. Using speakers or amplifiers in excess of the decibel levels in 5.50.020(A) should be prohibited at all times.
  - Delete the last sentence requiring a meter reading if the source is a commercial establishment. This has created enforcement problems for the police in situations where sound is “plainly audible”, but where the officer does not have a city decibel meter. Also, the requirement establishes a different enforcement standard favoring businesses over private parties. It is also in conflict with section 5.5.010, which says that meter readings are not required.
- D. Section 5.50.035: Permits
- Change the word “permits” to “variances” to match current staff usage.
  - Add language that addresses the following criteria: Proximity — within 250 feet of a residential zone, variances to daytime limits should seldom be issued and no variances should be issued to nighttime limits; Frequency — seldom issue variances for events held within 30 days of another event that impacts the same neighborhood; Duration — limit variances to six hours, and require a benefit to the community for a longer period.

### III. New policies

- A. Enforcement responsibility:
- Shift 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.
  - Authorize the city sound technician to issue citations based on routine monitoring; the police should only be involved in responding to citizen complaints, which should diminish in number.
- B. Outdoor music venue permit:
- Adopt an approach to outdoor music venues modeled on the Austin code, with two types of permits. The permits generate revenue to fund monitoring and enforcement efforts. (See: <http://www.austintexas.gov/department/sound-permits>)
  - 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.
    - i) Within 100’ of a residential property: no permits
    - ii) From 100’ - 600’: hours limited to 10 am to 8 pm Sun-Thur; 10 am to 10 pm Fri-Sat
    - iii) Beyond 600’: 10 am - 2 am
    - iv) No more than one permit within 30 days
  - Annual Venue Sound 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; decibel limits apply; subject to the four conditions for a Temporary Permit under the previous paragraph.
- C. Event center code:
- Review and refine land use policies, including the definition of “Entertainment & Recreation - not enclosed) in the permitted use tables.
  - Adopt new language regulating the location and use of facilities that are provided to third parties for the purpose of holding events for exclusive audiences.