

Joint Proposal Regarding Events on Private Property

This proposal is submitted by the following community organizations:
River West Neighborhood Association, Bend Neighborhood Coalition, Albany Neighbors

I. Proposed Change to the Authority of the City Manager:

- A. Require certain limits on the issuance of noise variances.
- B. Limit the use of Temporary Change of Occupancy Permits (TCOs).
- C. Establish a simplified noise enforcement protocol.

A. Set limits on noise variances:

1. Limit the granting of noise variances on residential properties and in areas near residences or noise sensitive units to no more than two variances per year per property.

WHY: When noise variances were created in 2012, they were intended to be used in limited circumstances, such as an occasional backyard birthday party or wedding, or for anniversary or seasonal business events — limited special occasions. They were never intended to create land use entitlements, such as being able to establish a permanent event venue. Experience has shown that noise variances are expensive, difficult to process, and hard to enforce, and have caused confusion with police, dispatch, promoters, and the public as to what they actually allow and how to communicate their limits. (This change is not intended to impact noise variances for events in the downtown area.)

2. Do not grant noise variances on private property in commercial or mixed use zones within 250 feet of residences or noise sensitive units.

WHY: When a variance is granted for a property that is too close to a residence or noise sensitive unit, decibel levels cannot be managed effectively to stay in compliance. This is due to a simple fact about the physics of sound — sound falls off with distance. If there isn't enough distance, decibel levels can't drop enough to be below limits in the variance. Also, because there is no standard for bass sounds which are intrusive and impactful, having a distance limit on variances will reduce the impact from bass. (Note: promoters using Century Center have found newer venue locations that meet these conditions; a successful concert was held at the Barrel Thief lounge this past summer with NO complaints. Other locations should be sought as well.)

B. Set limits on Temporary Change of Occupancy Permits:

1. Limit the issuance of TCOs to two per year per property.

WHY: By definition, TCOs are intended to be “temporary”, not a routine mechanism underlying a business plan. Repeated use of TCOs creates a de-facto land use entitlement without proper city and community review and supersedes existing land use approvals and required conditions. For example, Century Center applied for and received over 20 TCOs for outdoor events in the past two years. This is an overly permissive use of the TCO code that landowners, promoters, and City staff have used to improvise an “event permit for private property”. It amounts to an end-run around the proper review process in the land use codes. Event centers need to apply for this use and the city should conduct a proper review for these types of regularly occurring uses to meet land use laws.

C. Establish a simplified noise enforcement protocol:

1. Measure decibel levels at the nearest residence or noise sensitive unit, as required in the existing noise ordinance.

WHY: The current direction from the City Manager to the police department is to take decibel readings at the property where someone is complaining. Even the application for a noise variance refers, inaccurately, to such a location as a “noise sensitive unit”. The code specifically defines a noise sensitive unit as, “any building or portion of a building containing a residence, place of overnight accommodation, place of worship, day care center, hospital, school, or nursing care facility.”

2. Clearly identify measurement locations on a site plan as part of the noise variance approval.

WHY: Promoters can’t reasonably anticipate where a complaint might come from, so they are uncertain about how to coordinate decibel readings with settings on the sound board. They need to include such settings in their contract with performers. Measuring at the property line of the source has been suggested, but this is a problem, because it is not what the noise ordinance calls for, making it easier for a citation to be challenged in court. The ordinance calls for measuring, “on a property *other than the source of the sound* and that contains a residence or other noise sensitive unit.”

3. Require that the police assign an incident number to the first complaint regarding an event on a particular day, and then tag any additional complaints about the same event to that incident number.

WHY: Unless a caller knows to ask that an incident number be assigned, it may not happen. In addition, complaints have generally been tagged to the property of the caller, not to the property on which the event is located. This makes it hard to determine how many complaints an event generated. This data should be sent to the City’s program manager and kept for reference in evaluating variance applications.

II. Proposed Changes to the Noise Code:

A. Reduce the decibel level in residential zones.

B. Create a decibel limit for mixed use zones.

A. Reduce the decibel level in residential zones:

1. Lower the decibel limit from 65 dBA daytime and 60 dBA dBA nighttime, to 55 dBA at all times.

Why: This would bring Bend in line with Portland, Salem, and Corvallis, as well as most other cities in Oregon and the United States. This would set expectations for everyone — promoters, landowners, and business owners, as well as residential neighbors. This one simple change might mitigate the need for additional land use code changes for compatibility, by reducing the temptation for promoters to hold events too near a residential zone without a noise variance. It also addresses the problem of impacts from deep bass, because it will require either more distance from residences or lower sound levels.

If all residential zones were changed to a 55 dBA standard — simple, equitable and fair — noise variances can still be granted. Promoters would then have to comply with the limits set in the noise variance process. This one change would end the practice of promoters not applying for variances and hoping that weak enforcement will allow them to hold events with no real check on sound levels.

B. Create a Decibel Limit for Mixed Use Zones:

1. Add a standard for mixed use zones of 65 dBA daytime and 60 dBA nighttime.

WHY: There are currently no decibel limits in the noise ordinance for any of the new or existing mixed-use zones. This means there is no protection for residences or other noise sensitive units within mixed use zones. By default, Section 5.50.020(B) would apply, which sets the limit at 85 dBA. Allowing this gap to continue would lead to mixed use zones not fulfilling their promise as areas for more affordable housing units, due to the potential for ongoing noise conflicts. Since mixed use zones may contain both commercial and residential units, a daytime limit of 65 dBA 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.