



CITY OF  
**PORTLAND, OREGON**

OFFICE OF NEIGHBORHOOD INVOLVEMENT

**AMANDA FRITZ, COMMISSIONER**

Amalia Alarcón de Morris, Bureau Director

Noise Control Program

1221 SW 4th Avenue, Room 110

Portland, Oregon 97204

*Promoting a culture of civic engagement*

**Noise Review Board**

**April 13, 2016**

**Minutes - Draft**

**Present:** Carol Gossett, Melissa Stewart, Julie Greb, Kerrie Standlee, and Paul van Orden

**Minutes:** Kathy Couch

**Call to Order** – 6:07 pm

**Proposed Variance Fee Schedule Increase – Paul van Orden**

Paul explains that Commissioner Fritz's goal for the upcoming year is to get the Noise Office to be self-sustaining by 75%

Currently the office is funded with 64% coming from the General Fund.

Paul shares a Power Point presentation on the proposed fee structure, which is included in the minutes.

**Concerns and questions raised by the Noise Review Board**

Melissa Stewart - how do the Portland's fees compare with similar cities that have these kinds of permits?

Carol Gossett – Do other bureaus of the city have arrangements like this? How do we compare? She says typically, in a budget that includes fees, the charges amount represents service and the time that it takes. How do we justify the large increase in numbers?

Julie Greb – She is in favor of anything that funds the Noise Office. Since the office is grossly understaffed and it doesn't serve the public, and can't enforce anything, the city doesn't seem to prioritize the Noise Office in the last handful of fiscal cycles.

Kerrie Standlee – He would like to hear more about the basis of the rates he is looking at. He feels that the different rates are all over the place, in terms of subcategories. Some things appear to be hit harder than other categories with more impact. He says that there should be more thought put into figuring out where it is time and who should be paying for it. He would like to understand more the different timeline categories. He does not understand the meaning of some of the items, particularly variances that have a board review. He does not understand the 3 month project for \$1500. Julies clarifies that it would be \$5000. \$3500 for the board hearing and \$1500 for every 3 months. Paul then says that there is a line missing on what they are looking at.

Fee structure is:

\$3500 for the board hearing

1<sup>st</sup> 3 months to work in the City is \$5000

\$1500 is for additional 3 month increments.

When you add the first 2 pieces together, the amount for the first 3 months would be \$8500

Melissa Stewart – in terms of other events, are 3 days the same price as 1 day?

Paul says that if all we do is increase variance fees, without increasing citations, we run the risk of large companies taking the fines instead of paying for the variance fees.

Carol Gossett – This structure is predicated on a good economy. What happens if we go into a recession again, and no one is building, and this all drops? Would that mean staff layoffs? Her other concern is that some financing, such as low income and mod housing is very tightly budgeted and financed and these costs could make a difference. She feels that a range of pricing rather than the same fee for everyone may be something to look at. She would hate to think that these fees would keep a project like that from moving forward.

Kerrie Standlee –Would there be consideration given to construction with no impact?  
Different rate schedules for different time periods? Is that a possibility?

### **Public Testimony**

Brooks Hickerson – He doesn't see a fee scheduled for those who don't apply for a variance and then violate the code. Do they get a variance after the fact? It's explained to him that this would reference the conversation earlier regarding citations.

### ODOT – Carole Newvine

She is looking at the fee schedule and comparing it to the variance they are asking for tonight, and the costs look to be minimally \$14,500, if you are going to go by month. This is excessive. ODOT takes care of their own complaints, and, with the large amount of outreach they do, she doesn't believe that the Noise Office receives complaints on any of the ODOT projects. Public entities should be grandfathered in, or have a different fee schedule. Developers can pass it on to tenants. We pass it on to the taxpayer. She would like to see a lot of outreach, and ODOT needs time to respond to this proposal.

### Mary Sipe

She supports the proposal. She distributed a packet of her suggestions for the fee proposal. They are attached to the minutes.

### Sally Mize

She asks about rules for boats amphibious planes. Paul explains various entities have jurisdiction, dependant on where they are. (It may be Noise Office, although we would need to interface with the Sheriff, as we don't have a boat, and if they are in the air, then FAA has jurisdiction)

### **Request from Pioneer Courthouse Square on renewal of 5-year variance Shannon Weisinger- Production Director and Lindsay Klute, Event Director**

A 5-year variance (2016-2021) is requested in order to present events at Pioneer Courthouse Square during the lunch hour as well as on weekends. Similar events occur each year. Requested hours for the variance are from 11:30 a.m. to 1:30 p.m. and after 5:00 p.m. to 10:00 p.m. Monday through Friday. Unspecified hours are requested for Saturday and Sunday from 8:00 am to 10:00 pm. The applicant has requested the same decibel levels as their previous variance, namely, 75-80 dBA, as measured at any unaffiliated neighboring commercial property.

Staff at Pioneer Square, in conjunction with direction from the Noise Control Officer Paul van Orden, had contacted a mailing service organization, AD Mail Inc to obtain addresses for 3,000 letters distributed to residences and businesses surrounding Pioneer Courthouse Square, to inform them, as well as offering detail on the computerized hotline number, and the direct line of the Production Director for Pioneer Courthouse Square. The same mailing area was utilized to do notification for this variance application as the last multi-year noise variance.

Background documents on Pioneer Courthouse Square are attached to the minutes.

Kerrie Standlee asks if the annual reports that were part of the conditions in the last were variance given regularly. He would like a condition included addressing measurements taken at residences in Park Tower West, since there are now new residents since the last variance.

He would also like a condition added onto the voicemail to request the complainant leave their number, so they can be contacted. How many complaints related to square? Want conditions to reduce complaints.

**Motion was made by Melissa Stewart to grant a variance for Pioneer Courthouse Square for the period of May 1, 2016 through April 30, 2021 with the conditions below (Kerrie Standlee's suggestions included in the conditions). Julie Greb seconded the motion. The motion passed unanimously, 4 - 0**

- The variance will run from May 1, 2016 through Midnight April 30, 2021.
- The variance shall include the following variances. On weekdays, the permitted hours are 11:30 a.m. to 1:30 p.m., and from 5:00 p.m. to 10:00 p.m. On weekends and holidays the permitted hours are all day from 8 a.m. up to 10 p.m.
- The general standard for the variance shall be as follows: The permitted sound levels shall be 75 dBA (Max) with occasional peaks up and not exceeding 80 dBA, as measured at any unaffiliated neighboring commercial property.
- The more specific standard directly as measured at the homes or dwelling places of surrounding neighbors shall be as follows: The permitted sound levels shall be 70 dBA (Max) with occasional peaks up and not exceeding 75 dBA, as measured at any height on an apartment building or residential occupied building.
- Pioneer Courthouse Square, in conjunction with the Noise Control Officer, will contact Park Avenue West to set up a noise meter for readings during an event.
- The square will work out an acceptable measurement procedure with the Noise Control Officer to ensure compliance with the variance. The procedure will be made readily available to any staff working to monitor events for Pioneer Courthouse Square.
- The applicant will forward any complaints they receive to the Noise Control Office to be forwarded to the Noise Review Board.
- The applicant shall continue their complaint hotline to operate during events, especially during evenings and weekends, and a message shall be added requesting complainants leave their phone number, so their complaint will be better addressed and resolved. The phone number for concerns will be distributed to neighbors and Neighborhood Associations with all notification of events. This will include all residential receivers within a three block radius of Pioneer Square.
- Pioneer Square staff will notify the Noise Control Officer of any anticipated louder events that will be occurring at the Square.
- Representatives of Pioneer Square will return to the Noise Review Board by April 30, 2017 to report on progress to date and any complaints.
- An annual report of the events and sound levels measured will be supplied to the Noise Control Officer. It should include any information related to complaints.
- Pioneer Courthouse Square will provide a notice to all event promoters renting the facilities which they will sign that states they acknowledge that they will comply with the Noise Variance conditions, or they may face citations or other enforcement action from the Noise Control Officer or Officers from the Portland Police Bureau.

- This variance is not intended to cover any major festivals, concerts, or other activities whose sound impacts are clearly unusual or extensive as determined by the Noise Control Officer. Such events will be required to acquire a separate and additional variance in which the Square has co-applicant status with promoters or sponsors of the event. The variance shall be issued by the Noise Control Officer with conditions he or she determines are appropriate to the variance.
- The variance is subject to review, including revocation, based on the receipt of any complaint(s).

**Oregon Department of Transportation variance request for OR99E: SE Harold Street to SE Harrison Street – bridge replacement and pavement preservation project  
Marjorie West, Susan Hanson, Dillon Tannler, Bruce Bercot**

This request will repave 2.6 miles of OR99E from SE Harold to SE Harrison (part of the project is located in NE Milwaukie). The pavement, last replaced in 1994, has deteriorated and is need of repair. Grinding and repaving of the highway will repair and preserve the roadway and provide a smoother roadway surface. The current striping, last replaced in 1994, has deteriorated and is need of repair. Grinding and repaving of the highway will repair and preserve the roadway and provide a smoother roadway surface. The current striping will be replaced with durable, profiled thermoplastic striping and reflective pavement markings. Additional project elements include: replacement of Crystal Creek Springs Bridge with a culvert, drainage improvements on OR99E from SE Harold to Tolman Street, and sidewalk ramp upgrades on OR99E.

The variance request is for 72 nights of work. Originally requested estimated timeline was April 1, 2017 – September 31, 2017. They would like to modify this timeline to 72 nights with intermittent periods of nighttime work between January 3, 2017 and November 17, 2017.

The closest residential receptors are approximately 50 feet away from the roadway repaving work. An assisted living facility, Westmoreland Union Manor, is located approximately 170 feet away from where the loudest activities will be taking place (replacing Crystal Creek Springs Bridge). Existing dBA levels were monitored to establish a baseline, and, accordingly, the project is anticipated to be 12- 22 dBA higher than the existing levels. This is a moving operation, and ODOT is estimating nighttime work will consist of 59 nights for paving, 12 nights for the bridge replacement, 15 nights to bring to ADA standards, 10 nights for drainage improvements. The highest concentration of the request for 72 nights of nighttime work will be 20 nights adjacent of 72 nights. Bridge work drainage and reconstruction will happen concurrently during weekend closures. Paving and striping are anticipated to last for 20 nights. ODOT will attempt to perform the loudest work, jack hammers, saw cutting and generators before 10 pm and pile drivers during the daytime hours. They will have a 24 hour noise hotline with an answered line.

**Outreach**

ODOT performed 18 months of outreach to stakeholders, which included a website for over a year. Moving forward, the website information will include all construction and traffic information. They sent out a fact sheet, held meetings, sent mailings and emails, which included 2 Neighborhood Association groups and Business Association groups. They sent out a mailer in March to 11000 people within ¼ mile of the project highlighting noise notification, including this hearing information. They held an Open House on April 7, and had a station specific to noise there. They also held an online Open House that consisted of short videos of project staff explaining more about the project and included contact information. They have been engaging in direct communication West Union Manor and working closely with them. Closer to construction dates, they will do outreach next spring. On all communications, they prominently display hotline information.

Melissa Stewart asks for clarifications in the amount of nighttime work. She is told that the requested 72 nights would be intermittent during the project between January and November.

Patrick Romero, consulting engineer for ODOT describes how they predict construction noise levels. They look at the defined baseline daytime and nighttime noise levels and plug the anticipated levels in, using typical levels on construction areas he's worked on in past.

Much of their mitigation is complaint generated. Inspectors also have a dBA monitor with them while on the project, and the contractor has them onsite too. ODOT Inspectors are on the project all the time.

Kerrie Standlee asks for a copy of the variance application

Mary Sipe asks about the pile driving component of the project. She is told that they are using vibratory pile, which is around 90 dBA. It consists of driving 4 sheets, which lasts around 2 hours. This is commonly used shoring piles, as opposed to deep foundations.

Kerrie Standlee asks for some detail on one of the mitigation measures. Bullet 2 in their request (Use equipment with sound control measures no less effective than those provided on the original equipment) He would like this to say that the equipment in the above paragraph to be more effective than the original muffler, instead of "no less effective"

**Julie Greb makes a motion to approve a variance for Oregon Department of Transportation for 72 nights of construction work between January 3, 2017 and November 17, 2017**

**With the conditions listed below.**

**Kerrie Standlee makes an amendment that pumps, portable generators, air compressors will be required to have sound enclosed control devices of higher quality than original equipment**

**Melissa Stewart seconds the motion.**

**Motion passes unanimously 4 - 0**

Nighttime construction activities will comply with ORS 467, OAR 340-035, all other applicable laws and regulations, and to the extent feasible, the following construction noise abatement measures:

- No construction will be performed within 50 feet of an occupied dwelling on Sundays, legal holidays, or between the hours of 10:00 p.m. and 6:00a.m. on other days.
- Sound levels at any residential structure may not exceed a 75dBA Leq as measured for 15 minutes, with a Fast meter response.
- Equipment will use sound control devices higher quality than those provided on the original equipment. Equipment with un-muffled exhausts is prohibited.
- Equipment will comply with pertinent equipment noise standards of the EPA.
- Saw cutting, grinding, pile driving and jackhammer activity to occur before 10:00 pm and 6:00 am or during the weekend closures

- There will be a 24-hour telephone response line (Hot Line) available. The Project Manager shall investigate complaints and develop information necessary to address complaints within 24 hours or before the next scheduled night work. Noise Control Officer must be notified of any complaints within 7 days of the complaint, including a report describing how the complaint was resolved

If a specific noise impact complaint is received, one or more of the following noise mitigation measures may be employed:

- Stationary construction equipment will be located as far from nearby noise sensitive properties as feasible.
- Construction operations will be rescheduled to avoid periods of noise annoyance identified in the complaint.
- Idling equipment will be shut off
- Nearby residents will be notified whenever extremely noisy work will be occurring.
- Temporary or portable acoustic barriers will be installed around stationary construction noise sources.
- Electric-powered equipment will be operated using line voltage power or solar power.

#### **General Open Public Testimony**

Maryhelen Kinkaid – Reads statement (attached to minutes)-

Patrice Hanson – Reads statement (attached to minutes)

David Mitchell – Reads statement (attached to minutes).

Sally Mize – reads statement from Stan Penkin (attached to minutes)

Patrice Hanson – Says that Brooks Hickerson left a letter and hopes the board reads it. She adds that she feels that the board's not supporting Commissioner Fritz's pile driving idea is baffling and disturbing and inconsistent with the mission of the board. Both she and Mary Sipe received an award from the NW Examiner (local NW neighborhood newspaper) from the work they did to stop developers from using "impact hammer" pile driving methods. She thought they would come to the city and get support. She feels that the NRB succumbed to pressures from the construction industry, specifically DeWitt Construction, rather than acting for the good of the

community. She feels that anyone who thinks pile driving is only a nuisance should be required to live across the street from a project for a day or two. She addressed the composition of the board, wondering why there is a rep from the construction industry on the board, instead of garbage, or music venues. She thinks there should be a temporary seat for someone who is being affected by noise so they can be present at meetings when the public isn't invited. She would like to see a model of foot patrols and Neighborhood Watch for noise.

Mary Sipe - Reads statement (attached to minutes).

She also distributes the construction noise restrictions from the town of Aspen Colorado (ski resort with population of approximately 6,000 people in the Rocky Mountain region) (the document is attached to the minutes)

Board explains their rationale for their non-support of the pile driving proposal to all those who came to express their opinion. (no change in outcome, unenforceable given staffing and time issues, felt it needed much more work before being something they could approve)

**Approve minutes from March 9, 2016 NRB meeting**

**Melissa Stewart makes a motion to approve the minutes**

**Kerrie Standlee requests an amendment of the change of the word "oldest" to "longest existing"**

**No second**

**Motion passes unanimously, 4 - 0**

**Minutes approved, with change**

**Meeting Adjourned – 9:00 pm**