

# **A Review of the City of Billings Noise Ordinance**

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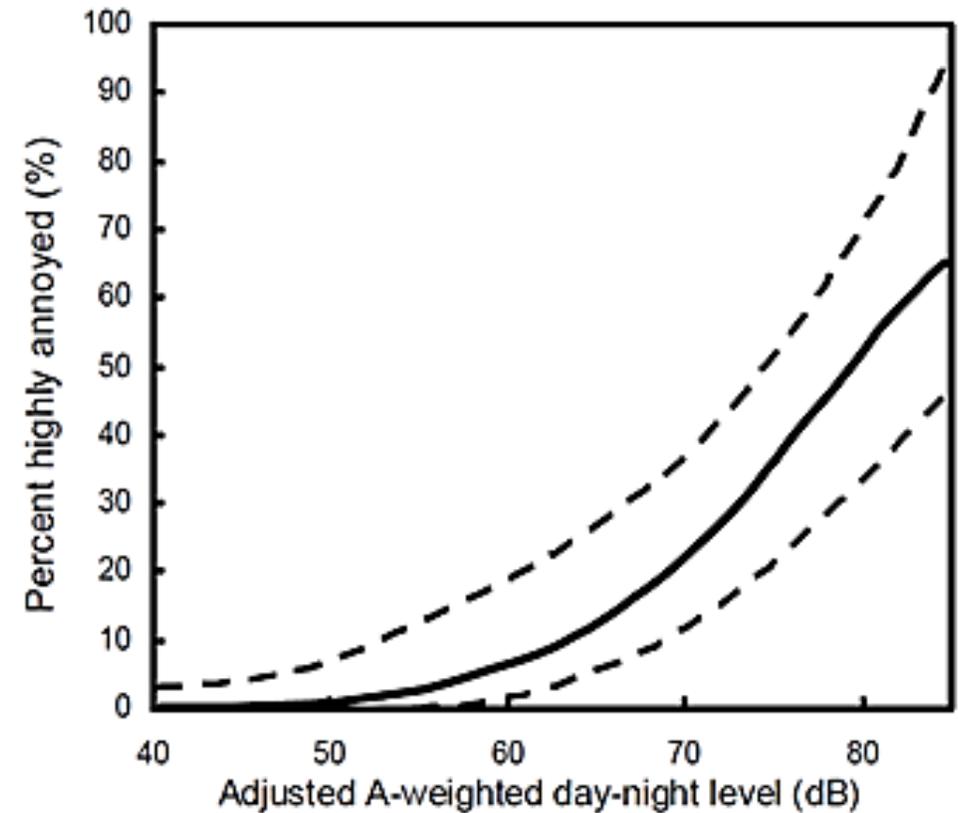
Safety, Health, and Industrial Hygiene Department

# What is community noise?

- Sound versus noise
- Community noise
- Units and metrics

# Why do we care about community noise?

- Generally, lower noise levels = lower risk of health effects
- There a greater concern about other adverse effects with environmental noise
  - Communication interference
  - Sleep disturbance
  - Annoyance



# Challenges in regulating community noise

- No national law
- Many areas lack formal ordinances
  - Falls to common law
- Noise pollution doesn't linger
- Technical measurement requirements
- One person's idea of a good time is another's noise problem
- Balancing individuals' rights to peaceful enjoyment of property with the rights to do business, make property improvements, attract customers, celebrate, etc.

# Three common approaches

- No ordinance
- A formal nuisance ordinance
- A noise limit ordinance

# City of Billings Noise Ordinance

- Noise limit ordinance with day/night limits established

- Four noise zones:

- Residential
- Light & heavy commercial
- Industrial

Zone	Day	Night
Residential	65 dBA	55 dBA
Light Commercial	80 dBA	60 dBA
Heavy Commercial	85 dBA	70 dBA
Industrial	90 dBA	80 dBA

- Waivers are permitted to allow for pre-planned, occasional exceedances – now limited to 4 per year
- A few specific measurement requirements are specified

# Comparison cities

- 10 cities reviewed
- Goal: to select similar MT and regional cities based on population
- Five next-largest Montana cities selected
  - Bozeman, Butte, Great Falls, Helena, and Missoula
- Five regional cities selected
  - Spokane, WA
  - Nampa, ID
  - Ogden, UT
  - Fort Collins, CO
  - Sioux Falls, SD

# Comparison: City of Billings noise limits

Zone	Day	Night
Residential	65 dBA	55 dBA
Light Commercial	80 dBA	60 dBA
Heavy Commercial	85 dBA	70 dBA
Industrial	90 dBA	80 dBA

**RED = Higher than all comparison cities; Orange = Higher or as high as all; Yellow = Higher than some, but lower than some; Green = Equal to or less than all**

# Comparison: Methods of measurement

- dBA as a unit of measure is common (and correct)
- Ambiguity of metrics is common
- Most comparison cities use law enforcement
  - Some use DEQ reps
- A variety of location specifications
  - 25 feet is common
  - Property lines are common, but different cities use different lines or do not specify
- Adjusting for background noise is common, but how to measure?
- Some are very prescriptive with measurement procedures

# Comparison: Methods of enforcement

- Law enforcement is the most common responsible authority for cities reviewed in this comparison
- Balancing accurate measurement needs against other police officer responsibilities is a challenge

# Comparison: Permits or waivers for non-exempt activities

- General exemptions for certain activities are common, but the activities vary
  - For example: road work, traffic, sporting events, etc.
- Non-exempt activities fall under the ordinance
- Some form of temporary, short-term relief from the ordinance rules is common
  - 4 of 10 had waivers/permits similar to the City of Billings ordinance
  - 4 of 10 had “hardship” waivers
- None had an obvious limit on the number of permits per year

# Recommendations from the review

Consider:

1. Continuing with reduction from 4 noise zones to 3
2. Measuring 25 or more feet from source on public boundary or complainant's property line on public boundary
3. Specifying  $LAS_{max}$  as the metric used in the noise limits
4. Specifying average, sustained noise levels ( $LAS_{eq}$ ) need to be kept 10 dB below the established maximum limits
5. Requiring training for law enforcement officers measuring noise
6. Removing measurement specifics to be handled in the training

# Specific City of Billings noise issues

- Daytime start time
- 45 dBA residential limit
- Noise from generators
- Noise from air handling equipment
- Intermittent and highly variable noise
- Environmental noise in summer months
- Permitted noise event end times
- Outdoor live music
- Stadium noise

# Public comments

- Vehicle noise
- Enforcement of existing ordinance/related rules
- Stadium noise
- Pickleball
- Other comments

**Questions?**

# PLANNING AND COMMUNITY SERVICES DEPARTMENT

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**To:** Mayor and City Council  
**From:** Wyeth Friday, AICP, Director, Planning and Community Services Department  
**Date:** September 14, 2018  
**Re:** September 17 Council Work Session – Gambling and Liquor License Regulation

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The purpose of this memo is to provide the City Council background on the number and locations of gambling businesses in Billings and how liquor and gambling businesses are currently regulated through the Billings City Code. Staff also has provided a summary of information researched in 2006-2008 when the City Council looked at potential issues these businesses may create and considered alternatives to further regulate these uses and activities.

Local regulations to control the location of businesses that either serve or sell alcohol is allowed by state law. Limited local regulations to control the location of gambling businesses is also allowed by state law. State law allows local regulations to supplant the state's separation distance requirement between a location that serves alcohol and churches or schools. The local regulation may include other land uses in addition to places of worship and schools. The local regulations may prohibit these uses from certain areas or districts and may set hours of operation for locations that serve alcohol.

## **I. Questions for Consideration**

The following are some questions to consider before the Work Session on Monday:

- What are the problems or impacts the City Council wishes to mitigate related to gambling businesses through changes to the City's current zoning regulations?
- Is the Council concerned primarily about mitigating impacts from gambling business, or also businesses that serve alcohol?
- Do restaurants with liquor licenses and gambling need to be considered differently than bars with gambling and no restaurant food service?

## **II. Project Re: Code**

This issue/topic has been identified in the Project Re: Code zoning code rewrite process and staff and the consultant team will provide information on options and ideas from other communities in the coming months as the code rewrite process continues.

## **III. Current Data and Process Review**

### **A. Information on liquor and gaming establishments in Billings today**

1. There are 156 alcohol beverage licenses, some of which include gambling. For state purposes, alcohol beverage licenses and gambling licenses are managed separately even though many alcohol beverage licenses have gambling attached.
2. There are estimated to be 113 active gambling businesses (Max of 20 machines per license), based on staff analysis of state provided data.
3. The number of gambling businesses appears to have declined from 2008 when staff estimated there were 131 gambling businesses (Staff has found it is very difficult to determine exact figures based on how state data is provided).
4. Some alcohol beverage licenses are either gambling restricted or the owners are not using the gambling portion of the license.
5. There are currently about 2,000 gambling machines in use in Billings, but the number can fluctuate regularly due to machines going in and out of service, according to state information.
6. Of the estimated 113 active gambling businesses, 63 also have restaurant food service and 4 serve food only at catered events. The remaining 46 locations only have snacks or bar service food.
7. In a city the size of Billings, all-beverage licenses are allocated at 5 licenses for the first 3,000 people and 1 license for each additional 1,500 people. However, given changes in state law over time this calculation does not directly match current Billings totals for population and licenses. It is better as applied to future licenses going forward based on population increases.

### **B. Current City Review Process for Gambling/Liquor Businesses**

1. The Planning Division, Police, Fire, Building, and RiverStone Health are all notified by the State of Montana of new licenses, transfer of ownership or change of ownership stake in alcohol licenses, and transfers of alcohol license locations.
2. Licensees have one year of non-use (sell, relocation time) and then the State will move the license to “lapsed” status for non-use. A new application for the license is the only way to have the license reissued.
3. The City zoning regulations do not define or specifically regulate gaming or what are commonly referred to as casinos. The zoning regulations specify what districts may allow the location of an alcohol license with or without gaming attached to the license.
4. Billings is using the state codes (See Section IV below for more information) to its benefit and has added further restrictions for the 600-foot separation – property line to property line (state is door to door), and Billings Criteria and Waiver Process for Schools, Parks with Playgrounds and Churches.

5. City staff mails notices to all property owners within 300 feet of the subject property for a special review application and has started, as per City Council direction, to notify property owners or parks, schools and churches within the 600 feet that require the local waiver.
6. The local process requires two public hearings and a special review application may be denied for un-mitigated impacts to surrounding properties. Waivers also may be denied under Section 27-612 (a) if the business location has no physical barrier between it and the uses described in 4 above.
7. Current City Code at 7-1100 also requires gaming businesses receive a license from the City. The City uses its Business License process to fulfill this requirement.

- C. How many City Special Review Applications for alcohol and gambling businesses in the past 10 years have been relocated existing licenses versus new licenses?
1. There have been 35 Special Review Applications reviewed in Billings from 2008 through 2018.
  2. Five of these did not include gambling.
  3. Twenty-three, or 66%, were relocations or transfers of existing licenses within the City.
  4. Twelve, or 34%, were new licenses, or were licenses floated into Billings from other places in Montana under state law.

#### **IV. State Laws Regarding Gaming, Liquor Licensing and Local Regulation**

- A. Section 16-3-309, MCA provides that cities may enact an ordinance defining certain areas where alcoholic beverages may or may not be sold, and may supplant the 600-foot separation rule from schools, and places of worship. (Section 16-3-306(1), MCA).
1. State regulates separation distance for retail locations for alcohol service by measuring door-to-door but only for properties that share the same street for addressing.
  2. Billings requires a 600-foot separation measured property line to property line and includes parks with playgrounds or playing fields as a use under this provision.
  3. Billings currently allows applicants to request a “waiver” of this property line to property line separation distance.
- B. Section 23-5-171(2), MCA provides a city also may enact an ordinance zoning certain areas in which gambling is prohibited.
1. Since gaming is almost always tied to a liquor license in Montana, the separation requirements for alcohol and gambling businesses from schools, parks with playgrounds and churches ends up capturing both activities in the local process.
  2. Billings now only allows businesses with both alcohol and gambling licenses in its Community Commercial, Highway Commercial, Central Business District, South 27<sup>th</sup> Street Corridor District, Controlled Industrial, Heavy Industrial and Entryway District zones by Special Review.
  3. Section 16-3-304, MCA allows a city to limit the hours when alcohol is served. Billings currently does not restrict hours of alcohol service or gambling activity.

- C. The State tightly controls gambling and liquor licenses, so local governments cannot limit the number of licenses allocated to a municipality (Section 16-3-309 (4) MCA).

**V. Review of Last Local Analysis in 2006-2008**

- A. City Council instructed staff in 2006 to review regulations limiting the number and location of casinos adopted by other Montana communities.
- B. Council considered in 2007-2008 creating a Casino Overlay District with greater separation distances and to include additional uses that required a separation.
  - 1. The purpose of the casino overlay district was to locate casinos in areas that minimize the adverse effects on the community in the best interests of public health, safety and general welfare, and ensure compatibility with existing neighborhoods
- C. The 2007-2008 Draft Ordinance:
  - 1. Defined Casino based on number of machines
  - 2. Created a Casino Overlay District that could be applied as follows:
    - i. Casino overlay districts shall be permitted in areas zoned Heavy Industrial (HI), Controlled Industrial (CI), Highway Commercial (HC), Community Commercial (CC), Central Business District (CBD), all Entryway zones (Entryway Light Commercial (ELC), Entryway General Commercial (EGC), Entryway Mixed Use (EMU) and Entryway Light Industrial (ELI)), and the South Shiloh Corridor Overlay District.
    - ii. Casino overlay districts shall not be located within 600 feet, in any direction, of lots used for schools, churches, or public parks that contains a children's playground or playfield.
    - iii. Casino overlay districts shall not be located within a certain distance in any direction of residentially-zoned lots. Council considered as much as 150 feet and as little as 20 feet, but never decided on a specific distance.
    - iv. Casinos granted approval for sale of on premise consumption of alcohol would be restricted from selling automotive fuels.
    - v. Considered Special Review for applications outside the Overlay District
- D. The Draft Casino Overlay Ordinance raised the following issues:
  - 1. At a 150' setback from residential lots, 67 casinos were non-conforming
  - 2. At a 20' setback from residential lots, 43 casinos were non-conforming
  - 3. Over time, casinos would have been clustered in downtown, the East Billings Urban Renewal District, at the King Avenue West Interchange, along the Montana Avenue Corridor, in the Gabel Road Area, in the Trans Tech Center Area, and along the Main Street Corridor in the Heights

Staff will follow this memo with a brief Power Point presentation to City Council at the Monday Work Session.

Public Safety District

# Purpose of the District

- To ensure all properties within the City pay for public safety services
- Reduce the costs paid by residential property owners
- Replace public safety mill levies with alternative funding method using a Public Safety District assessment

# Current Funding Method for Public Safety

- Assessed Value x Multiplier = Taxable Value
  - Various Multipliers
    - Residential = 1.35%
    - Commercial = 1.89%
    - Ag Land = 2.18%
    - Golf Courses = .95%
    - Centrally Assessed = 2.97%-12.00%
    - Exempt Properties = 0%
- Taxable Value x Mills = Taxes Paid
  - For FY19 the City of Billings levied 62.88 mills for Public Safety
- Examples:
  - Residential Property
    - $\$225,000 \times 0.0135 = \$3,038 \times 0.06288 = \$191$
  - Commercial Property
    - $\$5,500,000 \times 0.0189 = \$103,950 \times 0.06288 = \$6,536$
  - Exempt Property
    - $\$3,700,000 \times 0.000 = \$0 \times 0.06288 = \$0$

# Assessment Methods MCA 7-11-1024

- Square footage of lot or parcel relative to the entire district
- Equally to each lot or parcel
- Taxable valuation relative to the entire district
- Lineal footage of parcel that abuts the area to be improved
- Vehicle trips generated for a lot of its size and zoning classification
- Based upon each family residential unit or one or more business units

# Amounts Paid Under New Assessment

Property	Current Tax System	Square Footage	Equally per Parcel	Taxable Value <sup>1</sup>	Assessed Value <sup>2</sup>	Vehicle Trip Generation and Zoning
City of Billings Property	\$ 0	\$ 2,444,926	\$ 188,064	\$ 204,503	\$ 240,608	\$ 192,506
180K home 8,000sf parcel	\$ 153	\$ 122	\$ 280	\$ 132	\$ 155	\$ 109
225k home 11,500sf parcel	\$ 191	\$ 175	\$ 280	\$ 165	\$ 194	\$ 130
300k home 20,000sf parcel	\$ 255	\$ 304	\$ 280	\$ 220	\$ 258	\$ 130
Downtown Hotel	\$ 23,018	\$ 639	\$ 280	\$ 19,846	\$ 16,678	\$ 1,965
Westend Box Store	\$ 16,476	\$ 10,904	\$ 280	\$ 14,207	\$ 11,939	\$ 25,157
Heights Box Store	\$ 17,836	\$ 12,976	\$ 280	\$ 15,378	\$ 12,924	\$ 18,272
Westend Car Lot	\$ 7,260	\$ 2,612	\$ 280	\$ 6,260	\$ 4,774	\$ 5,660

<sup>1</sup> Taxable Value established for exempt properties using the residential multiplier

<sup>2</sup> Assessed Value is not a method allowed by statute, but is presented for illustrative purposes only

# Assessed Value

	<u>Assessed Value</u>	<u>AV%</u>	<u>Multiplier</u>	<u>Taxable Value</u>	<u>TV%</u>
Exempt Properties	\$ 1,746,051,598	12%	-	\$ -	0%
Residential	\$ 8,390,668,499	58%	0.0135	\$ 113,274,025	55%
Commercial	\$ 3,370,271,933	23%	0.0189	\$ 63,698,140	30%
Other Properties	<u>\$ 1,008,974,829</u>	7%	various	<u>\$ 30,018,666</u>	15%
Total	\$ 14,515,966,859			\$ 206,990,830	

# Points to Consider

- Square Footage of the parcel
  - Decreases amount paid by some residents
  - Significantly increases costs to City departments
  - Properties that have very small SF but a very high taxable value would see a significant decrease in dollars paid towards public safety
- Equally to each parcel
  - Doesn't accomplish the goal of reducing the costs to residential property owners
- Taxable Value
  - This is the current system used
- Lineal Footage
  - This information is not maintained city-wide
  - Significant staff time would be needed to accumulate all the data needed to analyze
  - Would likely be similar to using sq. feet of each parcel
- Vehicle trips generated
  - May reduce the costs to the individual property owner
  - Assessment amount varies based upon zoning code and parcel size
- Residential units or business units on each parcel
  - Residential units make up approximately 90% of all parcels in the City. In order to provide a savings to most residential properties, a significant amount of Public Safety expense would need to be placed upon businesses.



**Proposed**  
**COUNCIL CALENDAR**  
**December 2018**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	<b>3</b> Work Session 5:30 pm 220 N. 27 <sup>th</sup> St.	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>
9	<b>10</b> Business Meeting 5:30 pm 220 N. 27 <sup>th</sup> St.	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>
16	<b>17</b> Business Meeting Work Session 5:30 pm	<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b>	<b>22</b>
23	<b>24 NO MEETING</b> <del>Business Meeting</del> 5:30 pm 220 N. 27 <sup>th</sup> St.	<b>25</b> <u>Christmas</u> CLOSED	<b>26</b>	<b>27</b>	<b>28</b>	<b>29</b>
30	<b>31</b>					