

City Council Noise Ordinance Committee Meeting

August 7, 2019 4:00 P.M.

City Hall Conference Room
(First Floor City Hall Between Administration and Finance Departments)

MINUTES

Roll Call: Councilmembers present - Yakawich, Neese and Mayor Cole.

Staff Present: Brent Brooks, City Attorney; Kevin Iffland, Assistant City Administrator; Brian Korell, Police Captain; and Denise Bohlman, City Clerk.

Expert Present: Dan Autenrieth, Ph.D, Assistant Professor and Industrial Hygiene Program Manager, Montana Tech attended by telephone.

Members of the Public Present: Gerald Kessler

The meeting was called to order by Mayor Bill Cole at 4:06 PM. There were no additions or changes to the agenda.

July 11, 2019 Minutes – Councilmember Neese stated that on page 5 of the draft Minutes he thought there was an agreement among the committee members to remove Subsection 10 concerning posting waivers to the City's website. Mayor Cole and Councilmember Yakawich agreed that the entire Subsection (10) of the waiver section could be removed and to leave policy development to the City Administrator. Councilmember Yakawich moved for approval of the July 11, 2019 minutes with revisions, seconded by Councilmember Neese. Motion passed.

Update / Status on Retaining Sound Consultant for Acoustic Study: Big Sky Acoustics:

Mayor Cole reviewed the committee's conclusions: a) before deciding on blanket exemptions for stadiums; or b) to develop very detailed rules for stadiums; or c) have an exemption for stadiums, the only way to keep the exemption was to enter into a Memorandum of Understanding (MOU) that allows the City to make a deal, but before any of those decisions could be made the committee needed more data.

Brent Brooks stated Dr. Dan Autenrieth had recommended a firm in Helena, Montana, Big Sky Acoustics. Mr. Brooks stated he was in contact with Shaun Connolly, a partner in Big Sky Acoustics, and provided him a copy of the draft Ordinance. Mr. Brooks asked Mr. Connolly to provide a scope of work and give it to the committee before the end of August. Mr. Connolly would take measurements when he comes to Billings both during a football game and when no activities are occurring at the stadiums. He stated he may not be able to get to that until the end of September, to which Mr. Brooks stated the committee wished to have it sooner if at all possible. Mr. Brooks listed the stadiums to be considered as Daylis Stadium, Dehler Baseball Park, Rocky Mountain College's football stadium, and St. Francis's football field.

Dr. Autenrieth added that Big Sky Acoustics was his recommendation because it was the only board certified noise control agent in the state and a member of the Society of Acoustical Consultants. Mayor Cole asked whether there was anyone in Billings that could collect data in addition to Mr. Connolly's and he suggested that someone be trained in Billings (Police Department / Planning staff) during the data collection process. Dr. Autenrieth stated he didn't

want to confuse the two different issues. He stated he didn't want to confuse the issue of taking sound measurements for the purposes of determining compliance with a standard. He stated law enforcement officers that are not engineers or industrial hygienists are actually the folks most commonly responsible for taking measurements for those purposes. He continued he was very interested in helping the police department develop the skills and training to execute simple, expedient measurements in accordance with the requirements of the law. That's the intended plan and it is happening now.

He stated the other issue was not taking an expedient measurement at a property line to determine whether one is over or under the noise limit. He stated decisions have not been made whether a stadium should be subjected to a limit. So first the actual data collection needed to take place and a study performed by someone with expertise. He stated there may be multiple measurements on multiple days to accumulate the data and it may be expensive, but it needs to be done by a professional. He suggested that the data compilation be simpler and quick to reduce costs. He said it will come down to how defensible the data is and how confident the engineer is with the data. He said his understanding was that the City Council was seeking information about the noise impact on the community surrounding stadiums and that should not be left to anyone but an expert.

Councilmember Neese asked for a ballpark figure as to costs for the study. Dr. Autenrieth stated he could not give one because it would be very specific to number of measurements taken, the duration of the measurements, etc. and since he was not giving a proposal, he could not speculate. Councilmember Neese asked whether an RFP was needed. Mr. Brooks stated that the City's purchasing policy addressed this and once a proposal was received from Big Sky Acoustics, then he could involve the purchasing agent for a decision about an RFP. Kevin Iffland, Assistant City Administrator, stated that proposals under \$10,000 it would not be a problem, but proposals between \$10,000-\$25,000 would require gathering quotes, and anything over \$25,000 would require an RFP.

Councilmember Neese referred to information that Councilmember Gibbs had provided regarding noise mapping of cities. He asked whether some of that data could be compared to Billings' noise, i.e. school stadiums, etc. Dr. Autenrieth stated that modeling and noise contour mapping was a good approach when dealing with environmental noise problems. He continued to explain the process of collecting data for noise contour mapping. He stated he was not aware of any city utilizing data from other city to determine acceptable noise levels. He stated that geography, etc. needs to be considered in noise mapping and he has no experience with that, but the consultant may. He stated that stadiums are not a standardized item and PA systems operate differently, creating different types of noise.

Councilmember Yakawich mentioned he had attended a Heights Task Force meeting recently and a representative of School District No. 2 stated that games may be moved to the Metra race track area, rather than utilizing the schools' football fields for games in a collaborative effort with County, area colleges and School District No. 2. He continued that School District No. 2 may have other uses for the land where Daylis Stadium currently resides. He stated it would be a shame to spend money on this concerning Daylis Stadium and then a couple of years from now, the stadium would no longer exist. Councilmember Yakawich asked the committee why a study was considered at all. Mayor Cole responded that Daylis Stadium in particular and possibly Rocky Mountain College's stadium, had become an issue and now the City Council was asked to consider an exemption for stadiums from the noise ordinance. Therefore, this committee

needed to determine whether a blanket exemption should be given for all of the sports stadiums in the City or exemptions given to some and not all. He continued that the committee also needed to consider placing more detailed rules, if exemptions were not offered, such as different noise requirements for game day or during a football game. He said the other option was to enter into a MOU that detailed specifics for the stadiums to give the City more enforcement opportunity, should there be breaches to the noise.

Councilmember Neese referred to the health concerns about exposure to high levels of noise for long periods of time and suggested these concerns be considered. Mayor Cole stated his recollection from Dr. Autenrieth's comments during the last meeting was that stadium noise was not exposing people to long enough periods to be a concern. Councilmember Neese stated that industrial and construction noise in some neighborhoods, however, may be a concern.

Mr. Autenrieth reiterated that his understanding from the Council was that they wished to know how loud the noise is at the stadiums and is a major purpose of the study. He also stated once it is determined how loud the noise is at the stadiums, then it can be determined whether that is acceptable or not acceptable and recommendations could be made from there. The results from the study could be compared to the current Ordinance and the proposed changes to the Ordinance and go from there. He continued that a third item to consider may be whether controls could be set so the noise could not exceed the limits set forth.

Assistant City Administrator, Kevin Iffland, asked for budget limits. Mayor Cole responded that this issue was being caused by the School District and Rocky Mountain College. He asked would it be possible to get them to contribute to the costs of the study. Mayor Cole stated he wished to keep the study under \$10,000.

Mr. Kessler stated area businesses had contributed to the purchase of the new PA system for Daylis Stadium. He wondered whether those businesses would be willing to contribute to the study as well.

Councilmember Neese stated the school districts and the college should be contacted because the outcome could affect them. Mayor Cole asked who would be speaking to Mark Wahl of School District No. 2 next. Brent Brooks stated he would and he could ask Mr. Wahl for the School District to pay at least one-half of the cost of the study. Mayor Cole also suggested that may be the Pioneer Park Task Force could be asked to contribute \$1,000.

Captain Korell was asked by Mayor Cole if he had any concerns about the discussions. Captain Korell stated that whatever was decided by the committee and adopted by the Council concerning enforcement is what he and his officers would do. Mayor Cole asked Dr. Autenrieth about the cost of the device that would read noise levels. Dr. Autenrieth stated it was around \$3,000, the last time he checked. Councilmember Neese asked about annual maintenance for the device. Dr. Autenrieth estimated \$150/yr.

Review Council-directed Revisions to Current Noise Ordinance Draft from July 11, 2019 Committee Meeting:

Brent Brooks reviewed the recommended revisions and stated that there would be an updated version forwarded that deleted the entire Subsection (10) of Section 17-107(b) as noted during this meeting.

Next Steps/Direction to Staff:

Discussions ensued about getting feedback from the other Council committee members whether the revisions proposed were suitable to them. The committee asked that Mr. Brooks include Rocky Mountain College and Dehler Park in the conversations as whatever changes were made to the Ordinance, may affect them.

The committee members also discussed whether to pass an Ordinance that did not address exemptions for a stadium. Mayor Cole stated he preferred to get the data and address the concerns about exemptions now, rather than seek more revisions in the very near future.

Mr. Kessler extended an invitation to anyone interested in coming to his home to hear the noise heard in his home during the first football game at Daylis Stadium on August 16th.

Councilmember Neese suggested that the clause to limit waivers to 4 per year should be applied to the School District. He continued that if they wanted more than 4 waivers per year, they would be required to enter into a MOU. Mr. Kessler stated he didn't want that for School District No. 2. Councilmember Neese stated that whatever was put in place for Daylis Stadium, likely would not be applicable to the other stadiums.

Mr. Brooks recommended that the Council not rush into adopting any changes until after the data is received from the noise study. Councilmember Neese stated that MOUs could be for six (6) months at a time and be reviewed each time for extensions. Mr. Brooks stated that MOUs would have to be addressed in the Ordinance and the substantive content of the MOUs. Councilmember Neese stated it could be simply put in the Ordinance that unless there was an MOU, schools were to be limited by the details set forth in the Ordinance. He stated the details could be in the MOUs themselves.

Mayor Cole stated that the study may show that an exemption for stadiums would be practical, in which the entire conversation about MOUs would not be necessary, and thus the committee should wait until the study is completed and the findings given.

Mr. Brooks offered to draft MOU language to present to the Council on September 3rd, if that was what the committee wanted. He voiced his concern about passing the Ordinance with the proposed changes as they are presently, including the language about MOUs, but stated that if the results of the study came back affecting the proposed language, he wasn't sure where that would lead them. He recommended waiting for the result from Big Sky Acoustics before offering something to the Council.

Mayor Cole asked Mr. Brooks to prepare the language for the September 3rd Work Session, but that the committee would not ask Council to pass anything until after the findings of the study could be considered at a future date.

Kevin Iffland stated his concerns about tracking MOUs, should they become numerous. He stated who would track whether they expired and track the details of each and its translation.

Discussions continued about specific language that MOUs could contain. Mayor Cole asked about monitoring "game day" noise and acknowledged it was cumulative. Dr. Autenrieth suggested that communications on game days could be made between the complainant and the School District through walkie-talkie communication to find the correct amount of amplification.

Mr. Brooks stated he would contact Mark Wahl at School District No. 2 about contributing funds toward the expense of the study. When the study is received, Mr. Brooks stated he would forward a copy to everyone on the committee. He continued that he would contact Brad Nason at Rocky Mountain College and send drafts of the ordinance changes to him, School District No. 2, and the new owners of the Mustangs, Dehler Park.

Mr. Brooks stated he would draft MOU language and leave that information under the "Exemptions" portion of the draft Ordinance and replace the reference to "school events" with MOU language. He continued that he would work with Dr. Autenrieth as he had some good ideas. Councilmember Neese suggested limiting the number and agencies eligible to enter into an MOU, i.e., schools and stadiums.

The committee members discussed bringing the draft changes to the Council after the study proposal and its findings are received.

Next Meeting–If needed:

Committee decided not to schedule a meeting until after the study is completed.

Adjourned: 5:32 pm

By: 
Denise R. Bohlman, City Clerk