

City Council Noise Ordinance Committee Meeting

July 11, 2019 4:00 P.M.

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

MINUTES

Roll Call: Councilmembers present – Cromley, Yakawich, Neese and Mayor Cole.
Councilmember Gibbs attended via telephone.

Staff Present: Brent Brooks, City Attorney; Chris Kukulski, City Administrator; 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: Jerry Richter, Mark Wahl and Gerald Kessler

1. Welcome and Election of Committee Chairperson to preside over meeting(s)

- A) Introduction of Councilmembers on the Committee
- B) Introduction of Dan Autenrieth, Ph.D, Assistant Professor and Industrial Hygiene Program Manager, Montana Tech (by telephone)

Councilmember Yakawich moved to nominate and elect Mayor Cole to serve as the Chair, seconded by Councilmember Neese. On a voice vote, the motion was unanimously approved.

Chair Cole set the rules for the meeting. Mr. Brooks continued by addressing remaining agenda items below, stating that Section 17-105 seemed to receive the most attention.

Dr. Autenrieth stated that Council was showing care and concern for the health of the citizens. He stated in a nutshell the noise limits in the ordinance were too high and he recommended they be lowered, but admitted there were challenges of enforcement of the law. He stated that time and intensity had tradeoffs and listed occurrences wherein the db(A) levels could be over 85 db(A), i.e. handclapping for short intervals. He emphasized that environmental noise at 70 to 75 db(A) over 24-hours was safe to one's hearing, but that 55 db(A) 24 hrs./7days a week/365 days a year, continuously was an adequate margin of safety.

Dr. Autenrieth stated the challenge was in special cases wherein exposure to noise for short periods of time was troubling. He stated the scientific line was unclear because noise affected people differently and noise in and of itself was subjective. He stated noise from ball games at stadiums may not qualify as offensive to normal sensibilities, and noise created by railroads and airplanes differed.

Chair Cole stated it would be difficult for the City to not exempt stadiums based on health concerns.

Dr. Autenrieth stated it would be difficult based on health and welfare as the metrics are long term, not occasional events, such as ball games. He mentioned that the environmental noise

patchwork compared 10 cities – 6 out of 10 exempted stadiums and sporting events. He stated that Missoula was the only city in Montana that exempted motor vehicle racing events.

Gerald Kessler stated no noise limits on stadiums was not an improvement over the existing ordinance.

Dr. Autenrieth empathized and stated he personally felt it ridiculous and unnecessary to have a PA system. He stated it seemed reasonable otherwise to tuning and shielding by school district. Reasonable to attach limits or make them higher, i.e. 70 dc during the day and 75 dc at night. He stated that under the current stadium could be waived and may be more protective, but certainly could not be enforced at 4 waivers per year.

Councilmember Cromley asked if the sound from Daylis Stadium was more than in other municipal stadiums.

Dr. Autenrieth stated it was not, unless it was for a motorsports arena. He explained that sound propagation is difficult because sound travels through and is absorbed by building materials and environmental topography played a part, too.

Chair Cole asked what were the outer limits of noise that would significantly affect one's health.

Dr. Autenrieth gave an example of 140 dc from a gunshot near the ear. He stated noise less than 140 dc could cause sleep disruption, but there was no good data on the subject.

Chair Cole asked if stadium noise was at 140-155 dc.

Dr. Autenrieth replied it was not likely that high in stadiums. Noise at 155 dc would resonate in the chest cavity and cause lungs to collapse.

Gerald Kessler stated that the new PA system at Daylis Stadium was acquired 2 years ago and ever since then the noise was too loud. He stated that former School District No. 2 Superintendent Bouck had stated the decibel level was 70-100 at Daylis. Mr. Kessler stated that was too loud; it was an annoyance and he could not hear his TV over the stadium noise.

Councilmember Cromley agreed that it was not a health issue, but an annoyance issue. He continued that the Symphony in the Park had adequate sound, but not obtrusive.

Chair Cole asked how to measure sound and control it.

Councilmember Neese suggested more testing was needed and Mr. Kessler agreed.

Councilmember Neese asked if there were complaints from neighbors near Dehler Park.

City Administrator, Chris Kukulski, stated he was not aware of any and noise did not seem to be an issue there.

Chair Cole asked if an exemption could be given to School District No. 2.

Mark Wahl, School District No. 2's Activities Director, stated the district had adopted a good neighbor plan, used walkie talkies to communicate for sound adjustments. He stated the School District did not keep logs or data about noise levels, but would work on collecting data to determine when sound was too loud.

Councilmember Cromley left the meeting at 5:00 PM.

Dr. Autenrieth cautioned that lay person's testing with decibel readers can provide inaccurate data. He agreed that sounds from different devices is common, i.e. Ipods, etc. He suggested the City hire an acoustics engineer or environmental engineer to conduct testing and gather data to make recommendations.

Chair Cole asked that Dr. Autenrieth provide names of experts in Montana that could help with testing and data collection. He stated that football season would start soon and it was likely the ordinance would not have amendments to it before the season started.

Councilmember Yakawich stated the current ordinance was fine and he was concerned about investing more money into this as Mr. Kessler was the only person in the neighborhood with complaints.

Gerald Kessler stated his home was his happy place and it was being disrupted by excessive noise. He stated his windows rattled, and even when he was in the basement he could hear the base from the stadium music in his home that was 3 houses away from the stadium. He said he could not escape the noise while in his home.

Mr. Kukulski stated he had met with Mr. Kessler to address his concerns and stated it was difficult to create an ordinance that restricted a population of 110,000 people.

Mark Wahl stated that the higher volumes were not in very short spurts and were often caused by users not familiar with the PA system. He stated additional education of those users was needed. Mr. Wahl mentioned there were sound technicians at the Pub Station that could assist.

Councilmember Neese gave an example of reduced amplification on his church's sound system and encourage the School District to get the sound technicians in to help.

Mr. Wahl stated that the Big Sky State Games would held at the stadium in the upcoming weeks.

Mr. Kessler stated Big Sky State Games and Special Olympics events were not a problem; it was the football season that lasted 3 to 4 months every weekend.

Mr. Wahl stated he had given Mr. Kessler is cell number so he could call him during games and ask for sound adjustments, but Mr. Kessler had never called him so he assumed the sound was tolerable.

Councilmember Neese stated that logs for data needed to be kept.

Mr. Brooks stated that Dr. Autenrieth was the expert and he could help with sound metering.

Chair Cole suggested that the data be developed for annoyance levels both inside and outside structures, then put something in an agreement, rather than changing the ordinance.

Councilmember Neese stated that would be different for each stadium and each neighborhood. He suggested that for flexibility, memorandums of understanding would work best.

Dr. Autenrieth stated that Big Sky Acoustics in Helena, Montana, may be more available than he to conduct the testing. He stated the committee needed answers to how loud the sound was during football games; would equipment changes help; and could sound mapping be done. He encourage the committee to hire a board certified engineer.

Mr. Brooks moved on to Agenda 2(B) – Waivers and stated that 4 waivers per year for the stadiums was problematic and that exemptions may be considered.

2. Identify Remaining Issues to address in the revised draft noise ordinance

- A) **Exemptions Sec. 17-105:** which will remain and which be modified or eliminated-specific sections discussed during the First Reading were subsections **17-105 (6) through (8)**.

If no future exemptions are allowed for stadiums, the maximum permissible and average permissible noise levels would be enforced as provided in the table at section 17-103. Measurement would be from the complaining individual's property line closest to the sound source per Section 17-106(4).

- B) **Waivers Sec. 17-106:**-there was no specific issue concerning waivers expressed during the June 10 meeting however if stadiums are potentially removed from the exemption list in Sec 17-105 the property owner would be required to obtain a waiver for each event. The waiver section currently limits a location to four waivers per calendar year.

- C) **Decibel Levels:** what decibel (db(A) levels and duration does long-term negative health effects begin. CM Gibbs asked about the threshold level of permanent hearing damage.

Mark Wahl left the meeting at 5:01 PM.

- D) **Mayor Cole's proposed amendments**-see list below:

1. Change 17-103(a) "districts" to "zones"
2. Delete 17-103(b) in its entirety [unless someone can explain what it does and why it's necessary]
3. Change 17-103(c)
 - add "on a complainant's property" between "officials" and "in excess of" so it reads "Noise measured by trained and qualified city officials on a complainant's property in excess of the limits"
 - "districts" to "zones"
4. Change second subheading under 17-104 to read "Outside The Central Business District and East Billings Urban Renewal District"
5. Change 17-106(4)
 - delete "on a public boundary" in first sentence so it reads: "Noise will be measured at complainant's property line closest to the noise source ~~on a public boundary.~~"

-- delete in the second sentence "or more" and "on a public boundary" and add "the complainant's property" so it reads: "In cases where this location would result in a measurement taken less than 25 feet from the source, the noise level will be measured at a distance of 25 feet ~~or more~~ from the source ~~on a public boundary~~ on the complainant's property"

Dr. Autenrieth explained that the common area abutted to residential and when considering language changes to go with the most protective language. He suggested sound measurements be taken from the edge of the public property to the edge of the complainant's property.

Councilmember Neese referred to the proposed changes to Section 17-105(7) concerning Public Park Events and asked whether permitting could be coordinated between the police and parks departments. Police Captain Korell responded he was unaware of any waivers at parks, but that the Parks Department may be granting them. Chair Cole stated park permits need noise waivers.

Councilmember Neese stated he did not support the proposed language on Page 10, subsection (10) of the waiver section that indicated "when practicable", waivers would be posted on the City's website. He said either do it or don't do it and that perhaps an internal policy would be better. He suggested removing the proposed subsection (10). There was a consensus of the committee members to remove subsection (10) altogether.

E) Other Items to Add/Discuss: None

Public comment period began at 5:42 PM.

4. Public Comments:

Jerry Richter asked for clarification on a situation wherein a band is in the parking lot of an establishment, where would sound measurements begin and end. Dr. Autenrieth responded the measurement would be taken from the property line inside a public sidewalk to 25 feet of the source of noise in the parking lot. Discussions continued about how to measure and Dr. Autenrieth stated to keep the instructions clear for the benefit of law enforcement with references to the proposed language on Page 8, Section 106 (4).

Jerry Richter referred to the table of limitations and asked whether waivers allowed noise to exceed the limits. Mr. Brooks stated waivers limited the hours. Mr. Richter requested that waivers not be given for events 2 days in row and stated the new measurements would be helpful.

Public comment period was closed.

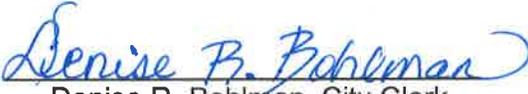
5. Committee Questions/Action:

The Committee will locate an expert and get an estimate of costs. Suggested the School District split the costs with the City. The Committee will not be prepared to provide recommendations to the Council for proposed language changes by the Work Session on August 5th. Need to begin data collection now.

6. Next Steps/Next Meeting–If needed:

The next meeting was scheduled for Wednesday, August 7th, at 4:00 PM, in the City Hall Conference Room.

Adjourned: 6:13 pm

By: 
Denise R. Bohman, City Clerk