



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 Meeting

#### Minutes

February 10, 2016

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

**Minutes:** Kathy Couch

**Call to order:** 5:59

**Pile Driving Proposal:** Commissioner Amanda Fritz, Commissioner's Staff Representative, Claire Adamsick

Claire Adamsick explains the process leading to the Commissioner's proposal. This proposal came from an effort to respond to ongoing community concerns brought to City Council from residents of the Pearl District. After last July's NRB code changes to Title 18 limiting hours and days allowed for driven-pile, approved at a City Council hearing, the Commissioner's office convened a task force with 4 members from the community –at-large, 4 from the construction & development industries and 1 Noise Review Board member, to further explore concerns focusing on pile driving. After the Task Force meetings ended, the Commissioner's office then reached out to the Bureau of Development Services to ascertain as to whether pile-driving restrictions could be done as more of an administrative task when permits were being approved. BDS had concerns with regard to timing. They felt that when they approved permits, it was already too far along in the process. They also felt they were not in a position to address livability concerns and thought the NRB could address this more effectively through the variance process.

Commissioner Fritz states that this proposal stemmed from last year's Council hearings where they heard concerns about pile-driving and the disruption to livability that driven-pile foundations bring. She heard from BDS that they felt that the best course of action would be to see an approved noise variance before they approved any building permits that require deep foundations. She clarified for the Board that options today would be to do something like this proposal, come up with something different or do nothing. She says she would be fine with any of the options.

She does feel that the disruption to the community is significant enough to further restrict the use of driven piles, which, according to BDS, number 20 or under annually. She also wanted to address the capacity limitations of the long understaffed noise office, which is unable to adequately address the needs of the community effectively, even with \$430,000 coming from the General Fund. She feels that if a small subset is affecting the community to this extent, then perhaps that subset should bear more of the cost. She points out that there is currently an exemption on limiting noise from driven pile, and though the NRB did limit days and times allowed, she feels that there might be something done beyond that. She wonders if there is a way to structure a variance process that incentivizes using methods for deep foundations other than driven pile, that wouldn't be punitive if there are no other methods. This would remove exemptions on pile driving except in industrial zones. (See attached documents for details on proposal)

This proposal would require a decision by the Noise Review Board. The Noise Review Board would also need to make a decision on fees. She explains that on the proposed fee schedule, there would be, beyond the Noise Review Board Hearing fee, there would also be a per-day fee for impact pile driving as a disincentive to using that method. She says that the current fee, which caps out per year, isn't adequate, because it doesn't encourage construction to work as quickly as possible, rather than dragging out the process. She explains that if the Noise Review Board feels there is no other way to set foundations, then they would be able to waive the per-day fee. Her office has made no suggested changes to the appeal process. She wants to get feedback from the NRB, the development community and others before moving forward.



**Questions from NRB:**

Melissa asks how the proposed fee schedule was arrived at.

Answer: Theresa Marchetti, Livability Manager calculated the fee schedule. Commissioner says that these could be piloted for the first year, and then looked at to ascertain if they are working.

Kerrie: Did you have an opportunity to see what was submitted by citizens, as far as recommended change to what you submitted?

Answer: No, they first wanted to get the proposal to the NRB and DRAC before looking at any revised versions.

David wonders to what extent we need this. Since Council adopted changes to pile driving in July, he doesn't believe there has been any in the City that they know of. He wonders if the NRB's changes haven't already, by limiting hours and days made it less desirable than other methods of placing piles.

Melissa feels that the assumption in the proposal is that people choose to use driven pile, as opposed to having no other choice because of geotechnical issues. She feels if they have no choice, then this is punitive. She then asks what the goal of the proposal is.

Answer: It's possible to add a part that states if a geotechnical engineer signs a document stating there is no other way to place piles, then per-day fees could be waived.

Claire says that from her understanding from BDS staff, there is an analysis presented with the permit application stating that it is a sound method to lay foundation, but BDS staff felt they weren't in a position to question the analysis. They are instead matching the proposal against code.

David says that he feels this Board will never be in a position to question a geotechnical engineer saying that pile driving is necessary to a particular site. He wonders, other than collecting a fee, what the impact of this proposal would be. He feels that if someone comes to a Board Hearing with an engineer, the Board wouldn't question it. He says that what would likely happen is that we've charged an additional fee, but the outcome is the same and the result for the neighbors is the same. He doesn't share the concern that developers are dragging out the pile-driving process longer than necessary. He says there is considerable expense getting someone onsite to drive the piles and does not feel they will have them there extra days just because there's no penalty for doing so.

Kerrie would rather see the companies come up with viable methods to reduce noise reduction procedures, then it wouldn't matter what equipment they use.

He would like the "distance effect" be taken into account, also. This is when the source of noise is so far away from receiver that it's no greater than the other noises coming to the receiver. He also points out that pile driving is not only for tall buildings. It's used for bridges and light rail, generally far away from receivers.

Carol wants to take the language and go step through a typical project, and think about how this plays out time-wise.

NRB is not prepared to make a recommendation at this time and intends to use some time during the March meeting to discuss it further.

David feels that fees should be based on administrative costs of processing the variance. He believes they should be connected to cost recovery. He is concerned about fees large enough to fund an entire office by singling out one industry. He also feels that the General Fund is the appropriate place for funding the noise office (along with other public safety entities) due to the fact that the population of Portland benefits from them.

**Public Testimony**

**Mary Sipe**, Pearl resident and Noise Task Force member

She distributes an alternate proposal document (attached to minutes). She feels the proposal coming from the Commissioner's office could be made much simpler. She points out that the developer hires a geotechnical engineer as part of the process, and it's the engineer who directs them as to what type of placing piles the soil will require. If they have to use driven pile, it's decided early on, long before construction starts. She believes that it should be a requirement that noise variance applications for pile driving include geotechnical engineer's report. It would be reviewed by the City's geotechnical engineer to validate, and is then rubber stamped by the Noise Control Officer. The only time that they would go to the NRB would be any instances that did not have a report from an engineer.

David Sweet says that he wants to be clear that the NRB isn't putting any code changes forward. The Commissioner is. This is her initiative, and they are responding to her proposal. He suggests that she get an opportunity to talk to the Commissioner.

She understands this, but want to further express her thought that the inclusion of auger casting is not appropriate, or encouraging its use. If this method is below the allowed 85 dBA for construction activities, then it doesn't seem that we can legally require a variance. She thanks the NRB, Commissioner and Noise Control Office for working with them. She adds that their original intent was not to ban pile driving but instead limit unnecessary use and perhaps someday require mitigation.

**Patrice Hanson** – Pearl District resident and member of PDNA Livability Committee

She says that agrees with Mary. She says that auger drilling isn't the same as driving piles. It is a misnomer. She thanks everyone.

**Ryan Hyke** – Pacific Northwest Regional District of Carpenters

PNWRDC represents carpenters, millwrights, and pile drivers. (there are about 400 pile driver members that live throughout the metropolitan area, many of which have made a living with this job for 20 to 30 years. He feels that the earlier changes the NRB put forth may have already had an effect on practice. He feels like the draft variance proposal is a ban on pile driving. On most construction projects, there is usually an alternate method, but it doesn't necessarily mean it's the best method. He feels like the City may be setting itself up for a lawsuit if there was a failure due to a foundation failure. He said that there was a lot of good discussion that came out of task force and this proposal doesn't include any of it. He suggests that we wait and see how the already established restrictions affect us before making any more changes.

**Commissioner Fritz**

The Commissioner asks for clarification from the NRB on their thoughts, and is concerned that the NRB isn't prepared to make any changes.

David says that there needs to be a difference in outcome as result of this for this to be needed and he is not convinced the proposal would change outcomes. He feels that the experience for residences around projects using driven pile will be the same. He feels it would impose an additional fee, but is not convinced that it would change any outcomes. The Board will look at this more in March.

**Portland International Raceway- One Year Review on PIR variance race for 2015**

David Sweeney from Vintage Racing and EC Mueller, PIR General Manager

David Sweeney says that this is the 40<sup>th</sup> year of vintage racers. The race includes all types of cars and model years. The vast majority are low noise generating vehicles.

Last year they asked for a 115 dBA limit, which was granted on the condition that they came back to review before the 2016 racing season. –They had no complaints during last year's races and practices and had no cars that came within 2 dBA of the limit. They considered it a successful event. Participants and attendance were up more than previous years. The weather conditions were mainly cloudy in the mornings and sunny in the afternoons. The 2016 dates are July 7 through July 10, as opposed to last year's dates, which were July 9 through July 12.

Carol shares that during last year's races, she walked the neighborhood and noticed different sound levels in different parts of the neighborhood.

Concerns were raised as to the functioning of the monitors. The Noise Review Board received a letter from Kenton Neighborhood Association, who was also concerned with monitors being set up to use. David (Sweet) says that the NRB expects monitors functioning and available to read on the internet showing maximum sound level dBA. This would also show on the web interface. The intention in having monitors was so neighbors could see dBA firsthand and have clarity as to the dBA, leading to greater acceptance.

EC Mueller –

Monitors are now in Finland for repairs. The monitors record data all the time. The web interface is the issue. He feels that watching the meter online isn't going to tell a whole lot. The meters are set with a trigger. This could be any kind of noise including things like train whistles, etc. Since PIR has the data they can listen to the recording and figure out the source of the noise. He adds that PIR has staff set up with noise meters during the races. There was a short discussion about reading with LEQ versus LMax and which is best. It was agreed there should probably be a study, but the bottom line is that the Code uses LMax and until the code is changed that has to be the descriptor.

PIR was given the go-ahead to continue on with their 3 year variance, and, should there be complaints, we can modify the variance. If complaints are not received then PIR will not have to come back next year.

#### **Public Testimony**

No public testimony was received on this issue beyond the written testimony provided by KNA mentioned previously. (attached to minutes)

#### **Update on NRB work plan regarding garbage truck noise**

Paul says that we are moving forward and collecting information from several cities, so far only by visiting websites. Next step is to ground truth by a direct phone call.

So far:

San Diego, CA – From 7 pm – 6 am no garbage truck noise is allowed

Washington DC – 9 pm to 7 am no garbage truck noise is allowed

Savannah, GA – 8 pm – 7 am no garbage truck noise is allowed

Chicago, IL – 10 pm – 7 am no garbage truck noise is allowed

Santa Clara County, CA – 10 pm – 7 am no garbage truck noise is allowed

Los Angeles, CA – Collection hours are between 6 am – 9 pm, if more than 200 feet from a residence, then anytime.

Miami, FL – franchise system no commercial or residential properties within 100 feet between 10 pm – 7 am.

(Modified. Former time was 11 pm)

San Francisco, CA – Any mechanical operation must not exceed 75 dBA, but there is no hour limitation.

By next month's meeting, the intention is to come back after having spoken with representatives from these cities on actual practices. Also, we would like to bring in industry and BPS next month. Paul will work with the Bureau of Planning and Sustainability to start the ball rolling, and reach out to past members of the Garbage Truck Task Force.

#### **Public Testimony**

**Dave White** – Oregon Refuse and Recycling Association. He would like information on other cities and would like the full report to be posted to the website.

**Dean Kemper** - Waste Management – Waste Management is one of the bigger haulers in the area, and Dean was also on the original subcommittee. He says that at that time, they did not come up with a silver bullet but did agree on best management practices which were complaint driven. He is surprised there are still complaints being received. He says that one of the problems of limiting hours of operation is getting easy access to containers. Traffic issues in some cases are problematic.

He also indicates that since the task force studied this issue, there have been substantial improvements in the industry. For example, formerly the lifts were powered hydraulically, and now there are other types of lifts. He also says that, despite best practices of using plastic containers and lids, they are somewhat hampered due to Fire Marshall regulations regarding the use of plastic lids in some cases. Other barriers are the increasing density within

the City and mixed use planning zones, and the fact that our containers are smaller here, so need to be picked up more often in some cases (commercial, generally).  
He says that the Portland Freight Committee needs to be engaged.

**Page Stockwell** – NWDA member. He installed noise dampening windows to keep the noise from late night/early morning garbage hauling and has logged 66 instances where he was awakened by the noise. He is pleased that this issue will be taken up again.

**Jeff Rames** – Resident (15<sup>th</sup> & Clinton)

He feels that his ability to sleep is being hampered by nightly garbage truck noise. He states that City Code is ineffective, and allows haulers to do anything they want.

### **Open Public Testimony**

#### **Jeff Rames**

- He describes the various noises occurring nightly across from his home:
- Railroad noises - horns and trains on tracks with their engines on
- Garbage trucks
- Deliveries early in the morning to the sandwich shop across the street from his home. The noise includes engines running and ramped being lowered at high volume, pallet jacks, and unloading of trucks
- He strongly feels like the City Code Title 18 is not an effective tool, nor does it protect residents who have to sleep.

Kerrie wants the Noise Control Office to check to make sure the City Code can regulate railroad idling.

**Kevin Veaudry Casaus** – Bureau of Planning and Sustainability

He states that BPS has no authority to restrict hours. He explains the BPS complaint process. If someone calls in a complaint, they first ask if the complainant has contacted the business. If they have, and it wasn't resolved to their satisfaction, BPS can call the hauler to ask if they can change their route. BPS has no authority to make them. They can't force either the business or hauler to change hours. They can attempt to mediate a change and are often successful.

**Motion to approve minutes for January meeting: Kerrie Standlee moves, Carol Gossett seconds. Motion passes unanimously, 5 - 0**

Many thanks to Chair David Sweet. As of February 28, he will be term limited out of the Noise Review Board. David says will miss us, but will still be around as an active volunteer.

**Adjourn at 8:15**

## **DRAFT Pile Driving Variance Process Proposal**

February 5, 2016

**Proposal:** Restrict the use of Pile Driving in construction projects in Portland due to the high impact on human health because of the jarring noise involved in the impact hammer method of pile driving, constituting a noise disturbance as defined in Title 18.

Remove the exemption of pile driving in City Code, PCC 18.10.060 A. Require a variance for all pile driving activities except in the industrial zones (currently IG1, IG2 and IH). Establish a per-day fee based on type of pile driving used.

### **Goals:**

- Provide disincentives for the use of impact pile driving where alternatives are possible
- Create a mechanism for greater oversight on pile driving impacts by the Noise Office and Noise Review Board
- Create a way for the Noise Office to gather data on the frequency of different types of pile driving throughout the city via a variance review process
- Generate additional variance fees to increase the Noise Office staff capacity for on-site inspections and responsiveness to complaints

### **Process:**

1. Permit applications submitted to the Bureau of Development Services (BDS) where the project includes pile driving must include a noise variance approval from the Office of Neighborhood Involvement.
2. All applications for noise variances related to pile driving will be reviewed initially by Noise Office staff. Noise variance requests lasting up to [XX] days may be granted by the Noise Officer. Applications for variances lasting over [YY] days will be referred for a public hearing and decision by the Noise Review Board.

### **Review Process:**

1. Application: Noise Office Staff notifies applicant of any missing information or materials within [XX] days of submittal.
2. If the pile driving variance request is for [XX] days or less, staff may require mitigation to meet the Approval Criteria in Section 18.40.020.D. A copy of the decision shall be mailed to the applicant and all other stakeholders entitled to notice

under Paragraph 4.

3. If the pile driving variance is for more than [XX] days, staff shall notify the applicant of the requirement for Noise Board review within [YY] days. The Noise Board shall consider the request at their next regularly scheduled meeting [ZZ] days after the public notice has been mailed.

4. Public notice: When a Noise Review Board hearing has been scheduled, public notice of the hearing is mailed to all property owners within 500 feet and to Neighborhood Associations and District Coalitions within 500 feet of the site. Public notification must occur no less than 21 days in advance of a Noise Review Board hearing.

5. The Approval Criteria for noise variances related to pile driving are the same as those for other noise variances, per PCC 18.40.020.D:

A. The physical characteristics, times and durations of the emitted sound,

B. The geography, zone, and population density of the affected area,

C. Whether the public health, safety or welfare is impacted,

D. Whether the sound source predates the receiver(s), and

E. Whether compliance with the standard(s) or provision(s) from which the variance is sought would produce hardship without equal or greater benefit to the public.

F. Applicant's previous history, if any, of compliance or noncompliance.

6. Decision: Made by the Noise Review Board in a public hearing within [XX] days after the variance application is determined to be complete.

7. Fees:

A. Fees are required for application processing, and for approved variances based on duration of the variance and the type of pile driving. See proposed fee schedule.

B. If the Noise Review Board grants a variance for pile driving, fees shall be charged based on the duration of the variance approval and the type of pile driving used per day. There is no annual maximum for variance fees associated with impact pile driving. The Noise Review Board may

decrease daily fees for pile driving noise variances based on review of the Approval Criteria.

8. Notice of Decision:

- A. Within [XX] days of a decision on a variance application, the Noise Office must mail a notice of decision to the applicant and all stakeholders who have provided comment and who have requested to be on the list of notified parties.
- B. Upon variance approval, PCC 18.10.060 requires the owner of a site to notify all residences within 500 feet of the site. Mailing will occur no fewer than 30 days prior to the commencement of noise authorized by the variance. The notice shall list the expected starting and ending dates for noise authorized by the variance, and give a telephone number for further information/reporting of concerns.

**Appeals:**

Appeals on Noise Review Board decisions are appealed to the City Council. Appeals of decisions by Noise Office staff are appealed to the Code Hearings Officer.

**Minor amendment to current City Code, 18.14.020 I:**

A variance decision of the ~~Noise Control Officer~~ or the Noise Review Board may be appealed to the City Council as follows:

1. Eligibility to appeal. A variance decision may be appealed by the applicant, his/her legal representative, any affected Neighborhood Association, or any person who has submitted oral or written testimony on the application.
2. Appeal acceptance criteria. Notice of intent to appeal shall be in writing to the City Auditor's Office within 10 days of the effective date of the decision. The notice shall identify the decision that is being appealed, and include the appellant's name, address, and signature, phone number, relationship to the variance decision action, and a clear statement of the specific reason(s) for the appeal including any alleged misapplication of City Codes.
3. Upon receipt of such appeal, the Auditor shall then place the matter upon the Calendar of the City Council.
4. At the time of the hearing, the City Council may consider such new matter as it deems appropriate, as well as the record developed before the Noise Control Officer or the Noise Review Board, and thereafter may affirm, reverse, modify or remand the



decision.

**Per City Code 22.10 – Appeals to the Code Hearings Officer**

1. An appeal on a variance decision by Noise Office staff must be filed within 10 business days of the date of the decision.
2. Appeal fee (per City Code) must be paid directly to the Code Hearings Office.
3. Upon receipt of a request for hearing, the Code Hearings Officer shall schedule and hold an appeal hearing within 30 days after the receipt of such request.
4. Notice of the time, date, and place of hearing shall be given to the person requesting the hearing and to the Noise Office. Notice shall also be given to any person who reasonably appears may be adversely affected should the decision or determination not be sustained after hearing. The Code Hearings Officer may provide by rule for the manner of providing notice to such persons.

**City of Portland  
Office of Neighborhood Involvement**

## Noise Variance and Other Fees Schedule

**Effective Date:**

<b>REVIEW FEES - 10 or more business days prior to date of event</b>	
High Noise Impact Events	<del>\$366</del> <b>\$850</b>
Construction	
Per Week One-week in duration	<del>\$510</del> <b>\$1500 (add 22 + 49 weeks)</b>
More than one week in duration	<del>\$850</del> yearly maximum
Additional Week	<del>\$170</del>
Motor Vehicle Racing	<del>2613</del> <b>\$5000</b>
Noise Review Board Variances (Annually)	<del>\$2613</del> <b>\$3500</b>
Additional years	<del>\$893</del>
Impact Pile Driving	<del>\$5,000</del>
	Per-Day Fee <b>\$TBD</b>
Pile Driving (Auger Method)	<del>\$5,000</del>
All Other Applications	<del>83</del> <b>\$100</b>

<b>ACCELERATED REVIEW FEES - Less than 10 business days prior to the date of the event*</b>	
High Noise Impact Events	<del>733</del> <b>\$1150</b>
Construction	
Per Week	<del>\$2,500</del>
One-week in duration	<del>\$681</del>
Additional Week	<del>\$339</del>
Maximum	<del>\$1,701</del>
Motor Vehicle Racing First Year	<del>\$5227</del> <b>\$7500</b>
Additional Years	<del>\$1,701</del>
Noise Review Board Variances	<del>\$5227</del> <b>\$7500</b>
Additional Years	<del>\$1,701</del>
All Other Applications	<del>\$200</del>

\*Variance applications submitted less than four business days prior to the date of the noise variance event, shall be charged a review fee equal to one and a half times the accelerated review fees listed above.

<b>ADDITIONAL FEES AFTER INITIAL APPROVAL</b>	
Scope of Work Revision	
All Other Applications	<del>\$41</del>
High Noise Impact Events	<del>\$80</del>
Construction, Motor Vehicle Racing	<del>\$166</del>
Noise Review Board Variances	<del>\$414</del>
Date Change Only	
All Other Applications, High Noise Impact Events	<del>\$41</del>
Construction, Motor Vehicle Racing	<del>\$83</del>
Noise Review Board Variances	<del>\$166</del>

<b>ADDITIONAL FEES</b>	
Administrative Review Fee	<del>\$110</del>
Administrative Review Appeal Fee	<del>\$500</del>
County Recording Fee	Equal to the cost of recording charges

**City of Portland  
Office of Neighborhood Involvement**

**Noise Variance and Other Fees Schedule**  
**Effective Date:**

## Impact Hammer Pile Driving Noise Variance Proposal

1. Require that all Noise Variance applications for impact hammer pile driving include a geotechnical report certifying that the nature of the project and soil conditions requires the use of the impact hammer and that the quieter augercast method is not a viable option. This is not an added step for the developer. They hire a geotechnical engineer as part of the project development.
2. This geotechnical report should be reviewed and validated by the City's geotechnical engineers.
3. Noise Variance applications for impact hammer pile driving that include a geotechnical report validating the necessity of the use of the impact hammer, would be reviewed for approval by the Noise Control Officer.
4. Noise Variance Permits issued for impact hammer pile driving that have been submitted with a geotechnical report certifying necessity would not be assessed the "per-day" fees.
5. Noise Variance applications for impact hammer pile driving that do not include a geotechnical report validating necessity would be referred to the Noise Review Board.
6. Noise Variances issued for impact hammer pile driving approved by the Noise Review Board that do not include a geotechnical report validating necessity will be assessed the "per-day" fees.
7. Impact hammer pile driving Noise Variance requests to extend the permissible hours of the day and days of the week beyond the 8am-6pm, Monday through Friday restriction which was added to Title 18 July 29, 2015 should not be granted under any circumstance.

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### Impact Hammer Pile Driving Noise Variance Proposal

Submitted to: Noise Review Board

By: Mary Sipe

Date: February 10, 2016

## **DRAFT Pile Driving Variance Process Proposal** with suggested revisions

**Proposal:** Restrict the use of Impact Hammer Pile Driving in construction projects in Portland due to the ~~high impact~~ serious negative physical and psychological effects on human health because of the ~~jarring noise involved in~~ dangerously loud 90-100+ decibel noise generated by the impact hammer method of pile driving, constituting a noise disturbance as defined in Title 18.

Remove the exemption of pile driving in City Code, PCC 18.10.060 A.

Require a variance for all pile driving activities except in the industrial zones IG1, IG2 & IH. ~~(currently IG1, IG2 and IH).~~

Establish a per-day fee ~~based on type of~~ for impact hammer pile driving used.

### **Goals:**

- Provide disincentives for the use of impact pile driving where alternatives are possible
- Create a mechanism for greater oversight on pile driving impacts by the Noise Office and Noise Review Board
- Create a way for the Noise Office to gather data on the frequency of different types of pile driving throughout the city ~~via a variance review process~~
- Generate additional variance fees to increase the Noise Office staff capacity for on-site inspections and responsiveness to complaints

### **Process:**

1. Permit applications submitted to the Bureau of Development Services (BDS) where the project includes impact hammer pile driving must include a noise variance approval from the Office of Neighborhood Involvement.
2. All applications for noise variances related to impact hammer pile driving will be reviewed initially by Noise Office staff. ~~Noise variance requests lasting up to [XX] days may be granted by the Noise Officer. Applications for variances lasting over [YY] days will be referred for a public hearing and decision by the Noise Review Board.~~

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#### Impact Hammer Pile Driving Noise Variance Proposal

Submitted to: Noise Review Board

By: Mary Sipe

Date: February 10, 2016

3. Applications for noise variances related to impact hammer pile driving that include a geotechnical report certifying that the use of quieter (i.e. augercast/CFA) types of pile driving is not a viable alternative will be reviewed for approval by the **Noise Control Officer**.
4. Applications for noise variances related to impact hammer pile driving that **do not include** a geotechnical report certifying that the use of quieter (i.e. augercast/CFA) types of pile driving is not a viable alternative will be referred for a public hearing and decision by the **Noise Review Board**.
5. Impact hammer pile driving noise variance requests to extend the permissible hours of the day and days of the week beyond the 8am-6pm, Monday through Friday restriction will not be granted under any circumstance

#### **Review Process:**

1. Application: Noise Office Staff notifies applicant of any missing information or materials within [XX] days of submittal.
2. If the impact hammer pile driving variance request is for [XX] days or less, staff may require mitigation to meet the Approval Criteria in Section ~~18.40.020.D~~. 18.14.020.D
3. A copy of the decision shall be mailed to the applicant and all other stakeholders entitled to notice under ~~Paragraph 4. 18.14.020.E~~
4. If the pile driving variance does not include the geotechnical report certifying necessity ~~is for more than [XX] days~~, staff shall notify the applicant of the requirement for Noise Board review within [YY] days. The Noise Board shall consider the request at their next regularly scheduled meeting [ZZ] days after the public notice has been mailed.
5. Public notice: When a Noise Review Board hearing has been scheduled, public notice of the hearing is mailed to all ~~property owners~~ residents within 500 feet and to Neighborhood Associations and District Coalitions within 500 feet of the site. Public notification must occur 10 days of submission of the noise variance application ~~no less than 21 days in advance of a Noise Review Board hearing.~~

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#### Impact Hammer Pile Driving Noise Variance Proposal

Submitted to: Noise Review Board

By: Mary Sipe

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6. The Approval Criteria for noise variances related to pile driving are the same as those for other noise variances, per PCC ~~18.40.020.D~~: 18.14.020.D

A. The physical characteristics, times and durations of the emitted sound,

B. The geography, zone, and population density of the affected area,

C. Whether the public health, safety or welfare is impacted,

D. Whether the sound source predates the receiver(s), and

E. Whether compliance with the standard(s) or provision(s) from which the variance is sought would produce hardship without equal or greater benefit to the public.

F. Applicant's previous history, if any, of compliance or noncompliance.

7. Decision: Made by the Noise Review Board in a public hearing within [XX] days after the variance application is determined to be complete.

8. Fees:

~~A. Fees are required for application processing, and for approved variances based on duration of the variance and the type of pile driving. See proposed fee schedule.~~

~~B. If the Noise Review Board grants a variance for pile driving, fees shall be charged based on the duration of the variance approval and the type of pile driving used per day. There is no annual maximum for variance fees associated with impact pile driving. The Noise Review Board may decrease daily fees for pile driving noise variances based on review of the Approval Criteria.~~

A. Variances submitted with a geotechnical report certifying necessity will not be subject to the "daily fee".

B. Variances submitted without a geotechnical report certifying necessity will be assessed a "daily fee".

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Impact Hammer Pile Driving Noise Variance Proposal

Submitted to: Noise Review Board

By: Mary Sipe

Date: February 10, 2016

9. Notice of Decision:

- A. Within [XX] days of a decision on a variance application, the Noise Office must mail a notice of decision to the applicant and all stakeholders who have provided comment and who have requested to be on the list of notified parties.
- B. Upon variance approval, PCC 18.10.060 requires the owner of a site to notify all residences within 500 feet of the site. Mailing will occur no fewer than 30 days prior to the commencement of noise authorized by the variance. The notice shall list the expected starting and ending dates for noise authorized by the variance, and give a telephone number for further information/reporting of concerns.



## **Inclusion of the augercast**

The main concern that I and others have about the draft proposal is the inclusion of the augercast drill pile driving method in the Noise Variance requirement.

The objective of our initiative has been to discourage the unnecessary use of the impact hammer pile driving method and to encourage the use of the quieter augercast method.

Including the augercast in the Noise Variance requirement is counter-productive.

In order to provide a baseline and determine if the augercast exceeds the 85 dBA construction noise limit, noise meter readings should be taken at several construction sites where the augercast (CFA) is currently being used to set foundation piles.

I have sent an e-mail and left voice mail messages for Paul in an attempt to arrange for the Noise Control Office to take noise meter readings at several sites where Pacific Foundation is currently in the process of setting foundation piles with the augercast drill. I have not heard back from Paul.

If noise meter readings show that the augercast does not exceed the 85 dBA construction noise limit, the Noise Variance requirement should only apply to impact hammer pile driving.

A Noise Variance permit is not required for other equipment that does not exceed the 85 dBA. How can you legally require a Noise Variance permit for the augercast if it does not exceed the 85 dBA limit?

If the purpose of subjecting the augercast to the Noise Variance process is to gather data on different types of pile driving being used throughout the city, there are other ways to gather this information. I have attached a spreadsheet of current and scheduled projects in the Pearl District showing which developers have used or plan to use the augercast vs. the impact hammer. This information was not difficult to obtain. As you can see over 13 developers have chosen the augercast method.

<b>Project</b>	<b>Location</b>	<b>Developer</b>	<b>Contractor</b>	<b>Pile Method</b>
Block 17	11th & Overton	Hoyt/Wood Partners	Anderson	Impact Hammer
Block 15/Cosmopolitan	11th & Northrup	Hoyt Street Properties	Anderson	Auger
NV Apartments	12th & Overton	Unico	Anderson	Auger
Abigail	13th & Raleigh	Bridge Housing	Walsh	Auger
The Modera	13th & Savier	Mill Creek		Auger
Pearl West	14th & Irving	BPM	H.S. Wright	Auger
Couch9 Apartments	9th & Couch	Urban Asset Advisor	Walsh	Auger
Hampton Inn	9th & Everett	Raymond	Anderson	Auger
Canopy Hilton	9th & Glisan	Buccini Pollin/Menashe		Auger
Block 5/Station Place	9th & Northrup	Williams & Dame		Auger
Apartments	11th & Hoyt	John Carroll		Auger
Block 136/PCNA	12th & Johnson	Security Properties	Anderson	Auger
Premiere Press/Office	14th & Hoyt	Meriwether Partners		Micropiles/Drilled
Broadstone Apartments	14th & Raleigh	Alliance Realty Partners		Auger
Block 20 Condominiums	11th & Pettygrove	Hoyt Street Properties	Anderson	In Design Review Process
Block 26/Affordable Apts.	14th & Raleigh	Innovative Housing		2017 Project

## Appeals:

Appeals on **Noise Review Board** decisions are appealed to the **City Council**.

Appeals of decisions by **Noise Office** staff are appealed to the **Code Hearings Officer**.

### Minor amendment to current City Code, 18.14.020 I:

A variance decision of the ~~Noise Control Officer~~ or the **Noise Review Board** may be appealed to the **City Council** as follows:

#### 1. Eligibility to appeal.

A variance decision may be appealed by the applicant, his/her legal representative, any affected Neighborhood Association, or any person who has submitted oral or written testimony on the application.

- There is no requirement for the applicant of a noise variance permit to mail notification that an application has been filed.
- The only time residents receive notification of a variance application is when they have made a specific request to the Noise Control Office. I know of only one incidence where this has happened.
- If a person does not receive notification of the noise variance application, how can they possibly submit oral or written testimony on the application?
- Essentially, residents who may be negatively impacted by the activity have no right to appeal unless they have made a specific request to the Noise Control Office requesting notification of all noise variance applications in their neighborhood.

Under these eligibility criteria the only way to provide opportunity for residents who might be negatively impacted by the noise variance would be to require noise variance applicants to mail notification of applications to all residents within 500 feet of the site where the activity is to take place.

2. Appeal acceptance criteria.

Notice of intent to appeal shall be in writing to the City Auditor's Office within 10 days of the effective date of the decision.

*Suggest:*

Within 15 days of receipt of notification of a noise variance application from applicant.

The notice shall identify the decision that is being appealed, and include the appellant's name, address, and signature, phone number, relationship to the variance decision action, and a clear statement of the specific reason(s) for the appeal including any alleged misapplication of City Codes.

3. Upon receipt of such appeal, the Auditor shall then place the matter upon the Calendar of the City Council.
4. At the time of the hearing, the City Council may consider such new matter as it deems appropriate, as well as the record developed before the Noise Control Officer or the Noise Review Board, *(was does this mean?)* and thereafter may affirm, reverse, modify or remand the decision.

## Per City Code 22.10 – Appeals to the Code Hearings Officer

(A variance decision of the **Noise Office Staff** may be appealed to the **Code Hearings Office** as follows :) *insert for clarification and consistency*

### There is no definition of eligibility to appeal

Suggest using the same criteria as for appeals for Noise Review Board decisions.

1. An appeal on a variance decision by **Noise Office staff** must be filed within 10 business days of the date of the decision.

*Suggest:*

Within 15 days of receipt of notification of a noise variance application from applicant.

2. Appeal fee (per City Code) must be paid directly to the **Code Hearings Office**.
3. Upon receipt of a request for hearing, the Code Hearings Officer shall schedule and hold an appeal hearing within 30 days after the receipt of such request.
4. Notice of the time, date, and place of hearing shall be given to the person requesting the hearing and to the Noise Office. Notice shall also be given to any person who reasonably appears may be adversely affected should the decision or determination not be sustained after hearing. The Code Hearings Officer may provide by rule for the manner of providing notice to such persons.

## Noise Variance Revised Fee Schedule

Based on the proposed revisions to the fee schedule, it appears that the analysis of the Variance Fee Schedule and Construction Noise Variance Permits that I submitted in November was reviewed and that most of my recommendations were incorporated.

There are two recommendations that I made that are not included in the proposal that I would like to reiterate:

1. Discontinue the practice of issuing permits that include more than one activity and require a separate permit for each activity.
  - This will allow better oversight and also generate much needed and more appropriate fees.
  - If an application includes multiple activities, the Noise Control Office staff will instruct the applicant to submit a separate application for each activity.
  - The current practice for construction noise variances appears to be that the construction company submits a noise variance request for multiple activities (such as concrete pours, crane erection, crane dismantle etc.) covering periods of 12 months or longer.
2. Discontinue the practice of issuing "revised variances" and require a new noise variance permit.
  - The current practice if an activity, for example concrete pours, is not completed within the time granted by the original permit, is that a "revision of work scope" (\$166 Fee) or "date change only" (\$83 Fee) permit is issued.
  - The current process for "revised permits" does not allow any opportunity for appeal.

**City of Portland  
Office of Neighborhood Involvement**

## Noise Variance and Other Fees Schedule

**Effective Date:**

### REVIEW FEES - 10 or more business days prior to date of event

<b>High Noise Impact Events</b>	<del>\$366</del> <b>\$850</b>
<b>Construction</b>	
Per Week One week in duration	<del>\$510</del> <b>\$1500 (add 22 + 49 weeks) What does this mean</b>
More than one week in duration	<del>\$850</del> yearly maximum
Additional Week	<del>\$170</del>
<b>Motor Vehicle Racing</b>	<del>2613</del> <b>\$5000</b>
<b>Noise Review Board Variances (Annually) Delete</b>	<del>\$2613</del> <b>\$3500</b>
<b>Additional years</b>	<del>\$893</del>
<b>Impact Hammer Pile Driving</b>	<del>\$5,000</del>
	Per-Day Fee <del>\$TBD</del> <b>\$250</b>
<b>Pile Driving (Auger Method) Delete</b>	<del>\$5,000</del>
<b>All Other Applications</b>	<del>83</del> <b>\$100</b>

### ACCELERATED REVIEW FEES - Less than 10 business days prior to the date of the event\*

<b>High Noise Impact Events</b>	<del>733</del> <b>\$1150</b>
<b>Construction</b>	
Per Week	<del>\$2,500</del>
One week in duration	<del>\$681</del>
Additional Week	<del>\$339</del>
Maximum	<del>\$1,701</del>
<b>Motor Vehicle Racing First Year</b>	<del>\$5227</del> <b>\$7500</b>
<b>Additional Years</b>	<del>\$1,701</del>
<b>Noise Review Board Variances</b>	<del>\$5227</del> <b>\$7500</b>
<b>Additional Years</b>	<del>\$1,701</del>
<b>All Other Applications</b>	<del>\$200</del>

\*Variance applications submitted less than four business days prior to the date of the noise variance event, shall be charged a review fee equal to one and a half times the accelerated review fees listed above.

### ADDITIONAL FEES AFTER INITIAL APPROVAL

<b>Scope of Work Revision</b>	
All Other Applications	<del>\$41</del>
High Noise Impact Events	<del>\$80</del>
Construction, Motor Vehicle Racing	<del>\$166</del>
Noise Review Board Variances	<del>\$414</del>
Discontinue revised permits for construction	
<b>Date Change Only</b>	
All Other Applications, High Noise Impact Events	<del>\$41</del>
Construction, Motor Vehicle Racing	<del>\$83</del>
Noise Review Board Variances	<del>\$166</del>

### ADDITIONAL FEES

Administrative Review Fee	<del>\$110</del>
Administrative Review Appeal Fee	<del>\$500</del>
County Recording Fee	<del>Equal to the cost of recording charges</del>

**Couch, Kathy**

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**From:** Ryan Pittel <ryan.pittel@gmail.com>  
**Sent:** Wednesday, February 10, 2016 9:48 AM  
**To:** ONI Noise Control Office  
**Cc:** Van Orden, Paul; Kenton Neighborhood; Angela Moos; Steven Rupert  
**Subject:** Noise Review Board review of the Vintage/Historic race at PIR

David and Noise Review Board,

The Kenton Neighborhood Association (KNA) will not have a member in attendance at tonight's Noise Review Board hearing. Unfortunately, the KNA Board meets on the same night as the Noise Review Board, and we have some important issues to discuss that require a quorum to move forward.

Even though a representative from the KNA will not be in attendance, we wanted to make sure that the following concerns are still heard.

-The neighborhood noise monitor was inconsistently functioning during the 2015 race season, so it is expected that it was completely operational during the 2015 varianced Vintage/Historic Race.

-When functioning, the neighborhood noise monitor was taking decibel readings in LAeq and not the required LMax. We expect the data presented tonight by PIR and the Vintage/Historic race will be presented in the required LMax from the neighborhood noise monitor. This should provide the Noise Review Board a clear picture of the event's impacts and ensure compliance with Title 18.

-Since Title 18 addresses noise at the receiver (neighborhood), it is imperative that the neighborhood noise monitor be consistently functioning and is reading decibels in LMax for all variance and non-variance events going forward. Doing this will help all parties involved ensure that PIR is in full compliance with Title 18.

Thank you all for your volunteer work regarding noise impacts in Portland. We look forward to hearing what was reviewed and what will be required by the event and its promoter for future events.

Sincerely,

Ryan Pittel  
KNA Noise Subcommittee Chair