

CITY OF KEIZER MISSION STATEMENT
**KEEP CITY GOVERNMENT COSTS AND SERVICES TO A MINIMUM BY
PROVIDING CITY SERVICES TO THE COMMUNITY IN A
COORDINATED, EFFICIENT AND LEAST COST FASHION**

A G E N D A

KEIZER CITY COUNCIL
SPECIAL WORK SESSION

Monday, August 30, 1993

7:00 p.m. to 9:00 p.m.

Robert L. Simon Council Chambers
Keizer City Hall
Keizer, Oregon 97303

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PUBLIC TESTIMONY**

This time is provided for citizens to address the Council on matters not on the agenda.

4. **DISCUSSION**
 - a. Cable TV Task Force Report
 - b. Noise Ordinance Report
 - c. Public Hearing Procedures

5. **OTHER BUSINESS**

This time is provided to allow Council members the opportunity to bring matters before the Council which are not on tonight's agenda.

6. **WRITTEN COMMUNICATIONS**

To inform the Council of significant written communications and petitions.

7. **ADJOURN**

Upon request, auxiliary aids and/or special services will be provided to participants with disabilities. To request services, please contact us at 390-3700 at least two working days (48 hours) in advance.



City of Keizer

930 Chemawa Rd. N.E. • P.O. Box 21000
Keizer, Oregon 97307-1000 • (503) 390-3700 • Fax # 393-9437

CITY COUNCIL WORKSESSION: August 30, 1993

AGENDA ITEM NUMBER: 4a

TO: MAYOR KOHO AND COUNCIL MEMBERS

FROM: DOTTY TRYK *dottry*
CITY MANAGER

SUBJECT: COMMUNITY TELEVISION TASK FORCE

BACKGROUND:

Mayor Koho appointed a four member task force to look at the City's options for providing community television. After extensive research and inquiry, the committee approached CCTV with a request for a proposal.

The CCTV Board of Directors have proposed a pilot project for one year to help us to assess the value of CCTV to the Keizer citizens. If it is successful, the City would then look at full participation in community TV.

In summary, in the first year, the project would provide televising one council meeting each month, training for 10 Keizer residents, and community billboard services. The cost would be \$15,000. This program is offered based on the goal of long term participation by Keizer.

If the Council proceeds to full participation, we would commit 2% of our cable franchise revenues to community TV. In addition, we would fund, in four annual installments of \$6,000 each, our share of the capital equipment that has been purchased by contributions from the City of Salem and Marion County.

FISCAL IMPACT:

In the first year, the cost for the project is \$15,000. In following years full participation will cost approximately \$45,000/year and the capital "buy-in" of \$6,000/year for four years. That is approximately \$2/year/capita.

The initial year's cost could be transferred from General Fund contingency. Subsequent years costs will need to be considered during the budget process. Translated into tax rate, the cost would be approximately \$0.06/thousand AV.

RECOMMENDATION:

Members of the task force will be at your meeting to discuss the proposal.

Look what's happening!



25

Capital Community Television

RECEIVED

'93 JUL 16 PM 10 20

July 15, 1993

To: Dottie Tryk, Keizer City Manager
From: Alan Bushong, CCTV Executive Director
Re: Keizer Pilot Project for participation in the CRC and CCTV

CITY OF KEIZER
REC'D 97303

On July 14, the CCTV Board of Directors unanimously approved staff recommendations to propose a one year pilot project of limited services to Keizer in return for a \$15,000 payment and the commitment to the long term goal of full participation in the Cable Regulatory Commission and CCTV. The Board and staff are enthusiastic about the prospect of full community participation in the CRC and CCTV!

Although this proposal is new territory, I suggest the next step is City of Keizer consideration of the Pilot Project. If considered favorably, the final step would be consideration by the Cable Regulatory Commission.

The purpose of the pilot is to assist the City of Keizer in promoting the value of community TV and preparing voters for a tax levy which will shift 40% of cable TV franchise fees from general fund use to the Cable Regulatory Commission. I will personally commit my time and energy to make the pilot project a success.

CCTV has included a view of long-term Keizer participation. I am pleased to see the Keizer "buy-in"--in consideration of Salem and Marion County's substantial investment to date--at a more affordable rate than I had estimated. CCTV recommends \$24,000 to be made over a four year period, based on the percentage of Salem and Marion County's franchise fees which since have been used for capital purchases above and beyond the Viacom's equipment grants of \$287,500.

I have discussed the limited-participation pilot project with City of Salem and Marion County staff, and each supported the concept. I was encouraged to develop a proposal based on fair and equitable financial contribution made and services received, including the services and costs of long-term, full participation. I have provided a copy of this document to these staffs for information and a confirmation of the approval process.

Finally, let me express my appreciation to you for your interest in the pilot project and your assistance with Keizer information. Thanks!

I am hopeful that this proposal will meet everyone's needs. Feel free to contact me at CCTV if you want to discuss the proposal or if you have questions about CCTV.

Sincerely,

Alan Bushong, CCTV Executive Director

cc: CCTV Board of Directors
Stewart Taylor, Assistant to the Salem City Manager
Carol Fischer Sullivan, Marion County Public Affairs Coordinator

585 Liberty Street SE
P.O. Box 234
Salem, OR 97308-234
Phone: 503-588-234

PROPOSAL

City of Keizer pilot project for start-up participation in the Cable Regulatory Commission and CCTV

With Cable Regulatory Commission (CRC) City of Keizer approval, CCTV will provide the following limited community TV services to the City of Keizer for a period of one year, with the understanding that the City of Keizer is committed to the long-term goal of full participation in the CRC and CCTV. Ongoing full participation is defined as providing the same level of funding and receiving the same level of services as the City of Salem and Marion County, the current CRC members. New CRC member start-up cost is a subject for local government discussion and consideration.

Pilot project services provided by CCTV:

1. Televisé on a tape-delayed basis one-half of Keizer City Council meetings, those scheduled on the third Monday of each month at 7 p.m. CCTV will provide on-the-job training for Keizer volunteers on CCTV's production van.
2. Conduct outreach and make six speaker presentations in Keizer.
3. Certify up to 10 Keizer residents in the use of camcorders and editing equipment. Target groups are the Keizer Rotary and Chamber of Commerce. Participants would pay workshop and activity fees, and would have the ability to produce one program each month using equipment managed by CCTV.
4. Provide use of the Community Billboard to all Keizer Viacom cable service area resident organizations and individuals

Cost of pilot project services:

Part-time staff/supplies: \$15,000

Equipment required: Adequate short-term; long-term will be addressed in renewal

Resources provided by Keizer: (includes community TV costs; does not include resources CRC may require)

1. \$15,000
2. Ten to 12 Keizer volunteers for on-the-job training on CCTV's production van. Volunteers must commit to serve as crew on Keizer City Council meetings.
3. Promotion of pilot project, through City of Keizer publications, community publications and community group meetings

Long term: full participation by Keizer

Services provided by CCTV will be the same services provided to the City of Salem and Marion County. Services include:

1. Televisé all City Council meetings, live when made possible through interconnection by Viacom
2. Provide to any Keizer resident organizations and individuals use of non-commercial community channel(s) managed by CCTV
3. Train and facilitate production by any Keizer resident organizations and individuals who attend an orientation and complete certification
4. Provide community education about CCTV to Keizer residents

Resources provided by Keizer

1. 40% of cable TV franchise fees
2. \$24,000, paid in four \$6,000 annual installments, to fund PEG access equipment capital purchases made above and beyond the Viacom capital fund. This amount corresponds to the percentage of Salem and Marion County franchise fees used for capital purchases. See below.
3. Accommodation of television production equipment at Keizer City Hall.
4. Promotion of community TV through City of Keizer publications

Basis for Keizer Capital Fund Payment of \$24,000

Salem and Marion County have a combined investment of over one million dollars of franchise fees in the Cable Regulatory Commission and CCTV. Most of the funds have been used for operations. However, the significant total of \$132,842 has been used to supplement access equipment fund purchases made from Viacom's 1987 and 1992 equipment grants totaling \$287,500. Keizer residents will directly benefit from these capital purchases.

The \$132,842 amount represents 13.1% of the total franchise fees paid to the CRC by Salem and Marion County. The calculations below were used to determine the amount of franchise fees Keizer would have paid for capital purchases since 1988, using the 13.1% figure.

Franchise Fee Payments To CRC (from audits)		Salem	Marion County
	1988-89	\$120,060	\$37,505
	1989-90	\$134,776	\$41,835
	1990-91	\$158,720	\$49,280
	1991-92	\$177,986	\$54,973
	1992-93 (budgeted)	<u>\$182,500</u>	<u>\$57,500</u>
	TOTAL	\$774,042	\$241,093
Total Salem/Marion County franchise fee payments to CRC			\$1,015,135
Access equipment purchased from franchise fees			\$132,842
Percentage of Salem/Marion Franchise fees used for equipment			13.1%
40% of Keizer franchise fee payments for 5 year period 1988-1993 (Information courtesy Keizer City Manager Dottie Tryk)			\$185,411
Application of percentage used to buy equipment (13.1%)			<u>x 131</u>
TOTAL			\$24,289

Recommendation: Round payment to \$24,000, divide into four \$6,000 annual payments.

STAFF REPORT

DATE: AUGUST 26, 1993
TO: MAYOR AND CITY COUNCIL
THROUGH: DOTTY TRYK, CITY MANAGER *Doty*
FROM: JOHN A. LIEN, CITY ATTORNEY *JAL*
SUBJECT: REVISED NOISE ORDINANCE

ISSUE

Should the Council adopt a revised noise ordinance?

BACKGROUND

At an earlier meeting, the Council reviewed the original draft noise ordinance which was derived from the City of Salem's noise ordinance. The Council referred the matter to a subcommittee for further study. The subcommittee discussed the ordinance and also heard a presentation from John Elegant who enforces the noise ordinance for the City of Salem. The attached draft of a revised noise ordinance results from the Council's subcommittee meetings.

The ordinance takes a three-pronged approach. This draft retains the general provision in Section 3(A) that noise which disturbs citizens is prohibited. This is essentially the ordinance that Keizer now has in place. The subcommittee added a phrase making it clear that animal noises are covered by the ordinance.

Section 3(B) lists those noises which are designated as violations of the ordinance. In other words, these specific items are deemed to be noises which annoy others within the city. Section 4 prohibits motor vehicle and off-highway vehicle racetracks in residentially zoned areas of the city.

Section 5 provides the technical standard for regulating noise. This section requires the use of sound measuring devices to determine compliance. It is this section that would be used to regulate most noise violations.

Section 6 contains the exemptions from the provisions of this ordinance.

One of the key elements of this ordinance is the variance procedure. These procedures are contained in Sections 8 through 14. This allows event organizers to apply for a variance when their proposed event would not meet the requirements of this ordinance. A Class A Variance is for an event which does not exceed 72 hours. A Class A Variance can be issued by the City Manager or the City Manager's designee. The Class B Variance is for an event which exceeds 72 hours and is issued by the City Council.

I have also attached several documents that the City of Salem uses in enforcing their noise ordinance. The Warning and Notice documents are used for regulating concerts at the State Fairgrounds. The copies of correspondence illustrate conditions imposed on smaller events under the provisions of the ordinance.

The Council subcommittee also wanted to consider the option of allowing the City to grant a variance to a community event or activity that did not have an official organizer or sponsor to file an application. As a proposal for your consideration, I have added the Class C Variance issued by the Council upon the City Manager's application. This option would give the Council a mechanism for approving a community event with terms and conditions the Council felt appropriate. The question which arose at the subcommittee level was whether this option would encourage "unorganized" events so that no group or person would have to accept responsibility for controlling the noise.

RECOMMENDATION

Review and discuss the draft ordinance and provide staff with direction on how to proceed.

JAL:clt
Enclosure
824.117

WARNING

NOISE COMPLIANCE STANDARDS

THIS CONCERT IS AUTHORIZED A CONTINUOUS NOISE LIMIT OF 65 DBC MEASURED AT THE STATE FAIR PROPERTY LIMITS.

EACH TIME A VIOLATION OCCURS, THE CITY'S REPRESENTATIVE WILL PROVIDE A WRITTEN NOTICE OF VIOLATION TO THE SOUNDBOARD CONTROLLER AND TO THE STATE FAIR'S REPRESENTATIVE.

A THIRD VIOLATION SHALL RESULT IN A DETERMINATION THAT THIS CONCERT HAS VIOLATED THE CITY OF SALEM'S NOISE ORDINANCE AND THE CONDITIONS OF THE NOISE VARIANCE.

VIOLATORS SHALL BE SUBJECT TO LEGAL ACTION.

NOTICE OF FIRST VIOLATION

NOISE COMPLIANCE STANDARDS

AT _____ A NOISE VIOLATION OCCURRED. A DBC
READING OF _____ WAS MEASURED AT THE STATE FAIR PROPERTY LIMITS.

YOU ARE HEREBY WARNED THAT YOU SHALL REDUCE THE DECIBELS BEING
PRODUCED AT THIS SOUND BOARD SO THAT NO FUTURE VIOLATIONS OCCUR.
YOU ARE DIRECTED TO AGAIN READ THE GENERAL NOTICE ENTITLED NOISE
COMPLIANCE STANDARDS. YOU ARE DIRECTED TO TURN THE VOLUME DOWN
TO AVOID AN ADDITIONAL VIOLATION.

CONTINUED VIOLATIONS SHALL RESULT IN LEGAL ACTION

SERVED BY: _____

HANDED TO: _____

DATE: _____

SECOND NOTICE OF VIOLATION

NOISE COMPLIANCE STANDARDS

AT _____ A SECOND NOISE VIOLATION OCCURRED. A DBC
READING OF _____ WAS MEASURED AT THE STATE FAIR PROPERTY LIMITS.

YOU ARE HEREBY WARNED THAT SHOULD ONE ADDITIONAL VIOLATION OCCUR,
IT SHALL BE DETERMINED THAT THIS CONCERT WILL NOT BE ALLOWED TO
CONTINUE.

**YOU ARE DIRECTED TO TURN THE VOLUME
DOWN AT THIS TIME TO AVOID AN
AN ADDITIONAL VIOLATION**

SERVED BY: _____
HANDLED TO: _____
DATE: _____





**CITY
OF SALEM,
OREGON**

City Hall / 555 Liberty St. SE
Room 320 / Zip Code 97301

BUILDING & SAFETY DIVISION 588-6256
PERMIT APPLICATION CENTER 588-6256
FAX (503) 588-6005

April 29, 1993

Wayne Bernard, Director
Campus Operations
Western Baptist College
5000 Deer Park Drive, S.E.
Salem, Oregon 97301-9392

Dear Mr. Bernard:

Sorry it has taken a week to respond to your letter; with Dave on vacation its been a challenge keeping up with work assignments.

The City of Salem is pleased to grant the 1st Baptist Church a three-month probational noise variance for Sunday morning church music, the kind you described as "soft, traditional style church music through our outside speakers located in the steeple tower." A couple of other churches have chosen to do so similarly during the past year without any objections from surrounding properties. It is my hope that the music is enjoyed by your church members and your neighbors.

The noise variance is conditional upon the music being played softly, not interfering with neighboring residences or businesses. If, as I suspect, there are no complaints during the three-month trial period, the City will grant you a one year variance, and if that is successful, a subsequent five year variance.

Please call me if you have any questions.

Sincerely,

John Elegant
Building & Safety Administrator

July 13, 1993



**CITY
OF SALEM,
OREGON**

City Hall / 555 Liberty St. SE
Room 320 / Zip Code 97301

BUILDING & SAFETY DIVISION 588-6256
PERMIT APPLICATION CENTER 588-6256
FAX (503) 588-6005

Ms. Glenda Nabors
West Salem Waterfront Festival
P.O. Box 5021
Salem, Oregon 97304

Dear Ms. Nabors:

The City of Salem is pleased to grant the West Salem Waterfront Festival a noise variance for the times, dates and activities listed on your attached July 5, 1993 letter.

This noise variance is conditional upon the following:

1. The "light entertainment at the Entertainment Stage" is not at an overwhelming volume which would prevent a) neighboring businesses from conducting their activities, or b) citizens in adjoining residences from listening to their radios or televisions at normal volumes.
2. If in the sole judgement of the Salem Police Department the volume of noise is disruptive, the Police Department shall, after first having asked for a noise volume reduction from an offending source, have the right to revoke this noise variance.

Have a fantastic event!

Sincerely,

John Elegant
Building & Safety Administrator

ATTACHMENT: July 5, 1993 Letter

cc: Force Commander, Salem Police Department

NS-VAR.WSW



BUILDING & SAFETY DIVISION 588-6256
PERMIT APPLICATION CENTER 588-6256
FAX (503) 588-6005

June 14, 1993

Salem Keizer Public Schools
Attn: Ms. Ann DeMarco, Coordinator
McKay Area Community Education
2575 Commercial Street SE
Salem, OR 97302-4448

Dear Ms. DeMarco:

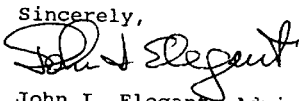
Thank you for your June 9, 1993 letter requesting a noise variance for Curtis Salgado for Saturday, August 14, 1993 from 7:00 p.m. to 9:00 p.m.

9:30 pm. J. I. Elegant
The City will grant you a noise variance conditional upon all of the following:

1. All speakers will be located north of Court Street and point north.
2. There will be no sound tests or similar testing of equipment prior to 5:00 p.m.
3. The music shall cease no later than *9:30 p.m.* *J. I. Elegant*
4. The music will not be loud enough to interfere with the activities of the State Legislature, if they are still in session.

Have a great event for a most worthy cause.

Sincerely,



John I. Elegant, Administrator
Building and Safety Division

cc: Salem Police Dept., Force Commander

1 BILL NO. ____

A BILL

ORDINANCE NO.

93-_____

2
3 FOR

4 AN ORDINANCE

5 PROHIBITING NOISE AND PROVIDING FOR
6 VARIANCE; REPEALING ORDINANCE 90-190

7
8 The City of Keizer ordains as follows:

9 Section 1. PURPOSE. It is hereby found and declared

10 that:

11 A) The making and creation of excessive, unnecessary or
12 unusually loud noises within the limits of the City of Keizer
13 is a condition which has existed for some time and the extent
14 in volume of such noises is increasing;

15 B) The making, creation, or maintenance of such
16 excessive, unnecessary, unnatural, or unusually loud noises
17 which are prolonged, unusual and unnatural in their time, place
18 and use affect and are a detriment to public health, comfort,
19 convenience, safety, welfare. and prosperity of the residents
20 of the City of Keizer, and

21 C) The necessity in the public interest for provisions
22 and prohibitions hereinafter contained in this chapter, is
23 declared as a matter of legislative determination and public
24 policy, and it is further declared that the provisions and
25 prohibitions hereinafter contained are in pursuance of and for
26 the purpose of securing and promoting the public health,
27 comfort, convenience, safety, welfare, and prosperity and the
28 peace and quite of the City of Keizer and its inhabitants.

29 ///

1 Section 2. DEFINITIONS. As used in this Ordinance:

2 A) "A-scale (dBA)" means the sound levels in decibels
3 measured using the A-weighted network as specified in American
4 National Standard Specification for Sound Level Meters (ANSI
5 S 1.4-1971).

6 B) "Commercial" means any use of an office, service
7 establishment, hotel, motel, retail store, park, amusement or
8 recreation facility, or other use of the same general type, and
9 rights-of-way appurtenant thereto, whether publicly or privately
10 owned.

11 C) "Decibel (dB)" means a unit for measuring the volume
12 of a sound, equal to 20 times the logarithm to the base 10 of
13 the ratio of the pressure of the sound measured to the reference
14 pressure. The reference pressure is 20 micropascals (20
15 micronewtons per square meter).

16 D) "Domestic power equipment" means power tools or
17 equipment used for home or building repair, maintenance,
18 alteration or other home manual arts projects, including but
19 not limited to powered hand tools, lawn mowers, garden equipment
20 and snow removal equipment.

21 E) "Frequency" means the time of repetition of a periodic
22 phenomenon, measured in Hertz (H_z).

23 F) "Impulse sound" means a single pressure peak or single
24 burst (multiple pressure peaks) for a duration of less than one
25 second as measured on a peak unweighted sound level meter.

26 ///

1 G) "Industrial" means any use of a warehouse, factory,
2 mine, wholesale trade establishment, or other use of the same
3 general type, and rights-of-way appurtenant thereto, whether
4 publicly or privately owned.

5 H) "Motor vehicle" means any land vehicle which is
6 designed to be self-propelled.

7 I) "Noise sensitive" means any use of a church, temple,
8 synagogue, day care center, hospital, rest home, retirement
9 home, group care home, school, dwelling unit (single family
10 dwelling, duplex, triplex, multifamily dwelling, or mobile
11 home), or other use of the same general type, and rights-of-
12 way appurtenant thereto, whether publicly or privately owned.

13 J) "Octave band" means an interval in Hertz between two
14 frequencies having a ratio of two to one. For purposes of this
15 chapter, octave band sound pressure levels may be measured at
16 any of the following center frequencies: 31.5, 63, 125, 250,
17 500, 1000, 2000, 4000 and 8000 Hz.

18 K) "Plainly audible" means unambiguously communicated to
19 the listener. Plainly audible sounds include, but are not
20 limited to understandable musical rhythms, understandable spoken
21 words, and vocal sounds other than speech which are
22 distinguishable as raised or normal.

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1 L) "Sound level" in dBA means the weighted sound pressure
2 level, measured by the use of an A-weighted sound level meter
3 set at a fast meter response.

4 M) "Sound level meter" means a sound level measuring
5 device, either Type 1 or Type 2, as defined by American National
6 Standard Specification for Sound Level Meters (ANSI S1.4-1971).

7 N) "Sound pressure level" in dB is 20 times the logarithm
8 to the base 10 of the ratio of the root-mean square of the
9 pressure of a given sound to the reference pressure. The
10 reference pressure is 20 micropascals (20 micronewtons per
11 square meter).

12 Section 3. NOISE DISTURBANCE PROHIBITED. A) Generally.
13 In addition to the specific prohibitions in subsection B) of
14 this section and Section 5, it shall be unlawful for any person
15 to knowingly create, assist in creating, permit, continue, or
16 permit the continuance of any noise disturbance. A noise
17 disturbance is any sound, including sound produced by animals,
18 which annoys, disturbs, injures, or endangers the comfort,
19 repose, health, peace, or safety of others, within the limits
20 of the City.

21 B) Specific prohibitions. Unless exempted by Section 6,
22 the following acts are declared to be noise disturbances,
23 provided that this enumeration shall not be deemed to be
24 exclusive:

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1 1) Dynamic braking devices. Using any dynamic braking
2 device on any motor vehicle, except to avoid imminent danger to
3 persons or property. A dynamic braking device is one used
4 primarily on trucks and busses to convert a motor from an
5 internal combustion engine to an air compressor for the purpose
6 of vehicle braking without the use of wheel brakes.

7 2) Idling engines on motor vehicles. Operating for more
8 than 15 consecutive minutes on any idling engine in such a
9 manner as to be plainly audible within any dwelling unit between
10 10:00 p.m. and 7:00 a.m.

11 3) Motor vehicle repair and testing. Repairing or
12 testing any motor vehicle in such a manner as to be plainly
13 audible within any dwelling unit between 10:00 p.m. and
14 7:00 a.m.

15 4) Steam whistles. Blowing any steam whistle attached
16 to any stationary boiler, except to give notice of the time to
17 begin or stop work.

18 5) Sirens. Sounding a stationary siren.

19 Section 4. MOTOR VEHICLE AND OFF-HIGHWAY VEHICLE RACE
20 TRACKS. It shall be unlawful for any person to operate or
21 permit to be operated a motor vehicle race track in any
22 residentially zoned district within the city. It shall be
23 unlawful for any person to operate or permit to be operated an
24 off-highway vehicle on a marked or unmarked course in any
25 residentially zoned district within the city.

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1 Section 5. MAXIMUM PERMISSIBLE SOUND LEVELS. A) Except
2 as specifically provided elsewhere in this chapter, no person
3 shall cause or permit sound to be received on property used as
4 specified herein if the sound exceeds the limits set forth in
5 subsections B) and C). For purposes of this section, "day"
6 hours are between 7:00 a.m. and 10:00 p.m., and "night" hours
7 are between 10:00 p.m. and 7:00 a.m.

8 B) Table of Maximum Permissible Sound Levels (in dBA).

Type of Source by Use	Type of Receiver by Use					
	Noise Sensitive		Commercial		Industrial	
	Day	Night	Day	Night	Day	Night
Noise Sensitive	55	45	60	55	65	60
Commercial	55	50	70	65	70	65
Industrial	55	50	70	65	Not Applic.	

15 1) No sound received on a property shall exceed the
16 established maximum permissible sound levels in the Table of
17 Maximum Permissible Sound Levels by 10 dBA.

18 2) No sound received on a property shall exceed the
19 established maximum permissible sound levels in the Table of
20 Maximum Permissible Sound Levels by 5 dBA for a cumulative total
21 of greater than one minute, but less than five minutes in any
22 ten minute period.

23 3) No sound received on a property shall exceed the
24 established maximum permissible sound levels in the Table of
25 Maximum Permissible Sound Levels for a cumulative total of five
26 minutes or more in any ten minute period.

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C) Exceptions.

1) Impulse sound. Notwithstanding any other sound levels in this section, no person shall operate or permit the operation of a noise source which emits an impulse sound which has a peak sound pressure level in excess of 100 dB in the day or 80 dB in the night.

2) Sound producing, amplifying, or reproducing equipment. During night hours, no person shall cause or permit sound produced by a musical instrument, radio, television, phonograph, loudspeaker, or other similar equipment to be plainly audible within any dwelling unit other than the source. This standard replaces the table in subsection B) of this section for night sounds only; day sounds shall be governed by that table.

3) Domestic power equipment. The day sound levels in the table in subsection B) of this section do not apply to sounds produced by domestic power equipment.

During night hours, no person shall operate domestic power equipment in such a manner as to be plainly audible within any dwelling unit other than the source.

4) Commercial construction. The day sound levels in the table in subsection B) of this section do not apply to sounds produced in commercial construction activity.

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1 5) Off-highway vehicles. No person shall operate any
2 self-propelling motor vehicle designed for or capable of travel
3 on or over natural terrain, including but not limited to
4 motorcycles, minibikes, motor scooters, dune buggies, and jeeps,
5 off a public right-of-way in such a manner that the sound level
6 generated thereby exceeds 60 dBA in the day or 55 dBA in the
7 night as measured at or within the boundary of a noise sensitive
8 receiver property.

9 6) Auxiliary equipment on motor vehicles. No person
10 shall cause, allow, permit, or fail to control the operation of
11 any auxiliary equipment on a motor vehicle for more than 30
12 minutes when the sound level generated thereby exceeds 55 dBA
13 in the day or 50 dBA in the night as measured at or within the
14 boundary of noise sensitive property. Auxiliary equipment means
15 a mechanical device which is built in or attached to a motor
16 vehicle, including, but not limited to, refrigeration units,
17 compressors, compactors, chippers, power lifts, mixers, pumps,
18 and blowers.

19 D) Measurement of sound levels under this section shall
20 be made at one of the following points, whichever is farther
21 from the sound source:

22 1) 25 feet from that point on a receiver building nearest
23 the sound source, or

24 2) That point on the receiver property line nearest the
25 sound source.

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1 Section 6. EXEMPTIONS. The following sounds are exempted
2 from the provisions of this Ordinance:

3 A) Sounds made by work necessary to restore property to
4 a safe condition following a public calamity, or work required
5 to protect persons or property from imminent exposure to danger.

6 B) Sounds made by warning devices to protect persons or
7 property from imminent exposure to danger, provided however that
8 burglar or fire alarms shall not operate continuously for more
9 than 15 minutes. Sounds made by the Keizer Fire District and
10 Marion County Fire District sirens during use and testing.

11 C) Sounds made by an emergency vehicle, as defined in
12 ORS 801.260, when responding to or from an emergency or when in
13 pursuit of an actual or suspected violator of the law.

14 D) Sounds made by current employment of land and
15 buildings on a farm for the purpose of obtaining a profit in
16 money by raising, harvesting, and selling crops or by the
17 feeding, breeding, management, and sale of livestock, poultry,
18 fur-bearing animals or honeybees, or the produce thereof, or
19 for dairying and the sale of dairy products or any other
20 agricultural or horticultural operations or any combination
21 thereof including the preparation and storage of the products
22 raised for man's use and animal use and disposal by marketing
23 or otherwise by a farmer on such farm.

24 E) Sounds made by activities by or on direction of the
25 City of Keizer in maintenance, construction, or repair of public
26 improvements in public rights-of-way or easements.

1 F) Sounds produced pursuant to a specific variance
2 granted by the Oregon Environmental Quality Commission, or under
3 Section 8 of this Ordinance.

4 G) Sounds produced by sound amplifying equipment at
5 athletic events sponsored by Salem-Keizer School District 24J.

6 H) Sounds made by motor vehicle exhaust systems that
7 comply with the provisions of ORS 815.250, but this exemption
8 does not apply to violation of Section 3(B)(2) of this
9 Ordinance.

10 Section 7. ENFORCEMENT RESPONSIBILITY AND AUTHORITY.
11 This chapter shall be jointly enforced by the police department
12 and the City Manager's designee.

13 Section 8. VARIANCES. A) Generally. Any person who
14 owns, controls, or operates any sound source which does not
15 comply with a provision of this Ordinance may apply for:

16 1) A Class A Variance for an event or activity which does
17 not exceed 72 hours in duration; or

18 2) A Class B Variance for an event or activity or series
19 of related events, or activities which are 72 hours or more in
20 duration.

21 B) The City Manager or the City Manager's designee may
22 file application for a community event or activity of any
23 duration which does not comply with a provision of this
24 Ordinance.

25 Section 9. VARIANCE APPLICATION. A) An applicant for
26 a variance shall submit in writing:

1 1) A reference to the provision from which the variance
2 is sought;

3 2) The reason or reasons why the variance is necessary;

4 3) The physical characteristics of the involved sound;

5 4) The times when the involved sound will be emitted and
6 the anticipated duration of the sound;

7 5) Where the sound will not be generated by a mobile
8 source which moves beyond the boundaries of one block, a site
9 plan sketch which shows the area of sound generation and
10 designates whether the uses in the area within 400 feet of the
11 source of the involved sound are commercial, industrial, or
12 noise sensitive as defined in Section 2, or a combination
13 thereof;

14 6) Any other supporting information which the building
15 official or Council may reasonably require to allow
16 consideration of the conditions set forth in Section 11.

17 B) The applicant for a Class A Variance shall submit the
18 application to the City Manager's designee. The applicant for
19 a Class B or Class C Variance shall submit the application to
20 the City Recorder, who shall place the matter on the agenda for
21 the forthcoming Council meeting.

22 Section 10. PUBLIC NOTIFICATION FOR CLASS B OR C VARIANCE.

23 The applicant for a Class B Variance or the City for a Class C
24 Variance shall notify in writing any person residing or owner
25 of a business within 400 feet of the sound source that an
26 application for a variance is to be considered by the Council.

1 Notice under this section shall state the date the Council will
2 consider the application, the nature and substance of the
3 variance to be considered, and that recipients of the
4 notification may file written comments on the application with
5 the City Recorder before the Council meeting at which the
6 application will be considered.

7 Section 11. VARIANCE REVIEW. The City Manager or the City
8 Manager's designee or Council may grant a variance, after
9 considering the written application for variance and any written
10 comments submitted by persons specified in Section 10, when it
11 appears that the following conditions exist:

12 1) There are unnecessary or unreasonable hardships or
13 practical difficulties which can be most effectively relieved
14 by granting the variance; and

15 2) That granting the application will not be unreasonably
16 detrimental to the public welfare.

17 Section 12. VARIANCE DECISION. A) The City Manager or
18 the City Manager's designee shall grant or deny a Class A
19 Variance within 3 days of receipt of a complete variance
20 application, excluding Saturdays, Sundays, and holidays.

21 B) The Council shall grant or deny a Class B or Class C
22 Variance within 30 days of receipt of the application, and may,
23 on its own motion, hold a public hearing on the application
24 before deciding to grant or deny the variance.

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1 C) The City Manager or Council may impose such
2 limitations, conditions, and safeguards as deemed appropriate,
3 so that the spirit of this chapter will be observed, and the
4 public safety and welfare secured. A violation of any such
5 condition or limitation shall constitute a violation of this
6 Ordinance.

7 D) A decision to grant or deny a variance shall be in
8 writing and shall state the reasons for such decision. The
9 Council or City Manager shall notify the applicant of the
10 decision and shall make it available to any person who has
11 submitted written comments on the application.

12 Section 13. REVIEW. The decision of the Council to grant
13 or deny a variance is final. The City Manager shall file his
14 written decision with the City Recorder, who shall place the
15 matter on the agenda for the forthcoming Council meeting. The
16 decision of the City Manager is final on the date of that
17 Council meeting unless the Council, on its own motion, decides
18 to reverse or modify the decision of the City Manager or to
19 schedule a public hearing on the application. If a public
20 hearing is held, the Council shall grant or deny the variance
21 within 30 days after the hearing, and may impose conditions on
22 the granting of the variances as set forth in Section 12.

23 Section 14. VIOLATIONS. A) Violation of any provision
24 of this Ordinance is an infraction.

25 Section 15. REPEAL. Ordinance 90-190, Prohibiting Noise,
26 enacted November 5, 1990, is repealed.

STAFF REPORT

DATE: AUGUST 26, 1993
TO: MAYOR AND CITY COUNCIL
THROUGH: DOTTY TRYK, CITY MANAGER *Dotty*
FROM: E. SHANNON JOHNSON, CITY ATTORNEY
SUBJECT: LAND USE PUBLIC HEARING PROCEDURES

The staff has been discussing making changes in the hearing procedures in land use cases. There are two reasons for this. First, a review of previous cases indicated that the system does not respond well to questions and comments from the participants once the hearing was closed. Second, the land use law in Oregon requires some specific procedures to be followed to avoid having the Land Use Board of Appeals (LUBA) remand the case back to the City or reverse the City's decision. Though the current procedures comply with state law, it was felt that a refinement of the process would make it less likely that there would be deviation from the required procedures.

The following is a suggestion or "script" for discussion purposes at the August 30, 1993 work session:

1. Opening Statement by the Mayor: We suggest that the Mayor open the public hearing and then ask if there are any members of the Council who have bias in this particular case, conflicts of interest, or any ex parte contacts with either the proponents or opponents, or an ex parte contact by site visit. (See attached memo.)
2. City Attorney Gives Required Oral Notice: ORS 197.763 requires certain notice to the participants at the beginning of a quasi-judicial hearing. Failure to give the warning exactly does not automatically make for a LUBA remand or reversal, but means that the participants can raise any issue at the Land Use Board of Appeals, even if they did not raise it at the hearing. On the other hand, if the notice is given correctly (both the written notice to area property owners and the oral notice at the hearing), then the failure to raise an issue at the hearing means that LUBA will not consider that issue at all on appeal.

3. Staff Report: John Morgan or Skip Wendolowski would present the staff report at this time. In addition to substantive recommendations, the report will clearly indicate staff's recommendation regarding closing or continuing the hearing.
4. Order of Testimony. The testimony will be taken in the same order as in the past:
 - a. Applicant and applicant's representatives.
 - b. Others in favor of the application.
 - c. Opponents to the application.
 - d. General comments.
 - e. Rebuttal by the applicants.
 - f. Additional staff comment.
5. Discussion by City Council: I use the term "discussion" rather than deliberation because we suggest holding the hearing open following the initial presentations. The City Council can discuss the matter fully and debate the issues. If questions arise during this discussion period, the Council is free to ask staff and the participants to address such questions because the hearing is still open. This change in the procedure will remove a stumbling block that occurs when questions arise following the close of the hearing.
6. Continuation of Hearing and Motion: Unless the matter is an extremely simple one with no opposition, we suggest that when the Council is ready for a motion, that the Mayor continue the public hearing to the next meeting. The Mayor would state that the continuance is for the limited purpose of taking comments regarding the written conditions voted on at the first meeting. At that point, the Council could debate and vote on a motion to direct legal counsel prepare the appropriate order or ordinance with any additional conditions that the Council feels are appropriate. Staff and legal counsel would then prepare the order and a supplemental staff report to be available seven days before the next meeting.
7. Final Hearing: At the final hearing, the Mayor would open the continued public hearing and give the statement referred to in number 1 above. Any supplemental staff comments could be added and any comments from the participants regarding only the proposed conditions could be taken. The Mayor would then close the public hearing and the Council would vote on the written order or ordinance.

The advantages to this procedure will be added opportunity for input from the participants, less chance for error in the final written order or ordinance, and less likelihood of successful appeal to LUBA. The disadvantage to the procedure is the additional public hearing, and the possibility of a required third hearing, if the applicant presents additional evidence at the second hearing. State land use law provides that if requested, a continuance must be granted to a participant if the applicant presents additional (new) evidence. Because the second hearing should be limited to the conditions and the conditions have all been discussed, it is hoped that no new evidence will be presented, or if there is new evidence presented, that the opponents will feel they have had sufficient opportunity to rebut and offer comments.

These suggestions are for discussion purposes and the staff welcomes your comments. Thank you.

ESJ:clt

MEMORANDUM

TO: Mayor, City Council, Planning Commission
FROM: E. Shannon Johnson, Assistant City Attorney
RE: Ex Parte Contacts with Planning Commission
or City Council Members
DATE: June 19, 1991

I have reviewed some statutes and cases regarding the above referenced matter. Both Planning Commissioners and City Councilors have had inadvertent contacts with land use applicants or opponents and I felt we should develop a specific policy in this regard.

Though the Land Use Board of Appeals is reluctant to reverse or remand a case based on ex parte contacts, it still can be a problem, particularly if an aggrieved party can make a argument that such contact affected the decision. At a minimum, it can be a problem with the public's perception of the impartiality of the decision. Therefore, I would recommend that the Planning Commission and City Council adhere to the following policy:

1. If possible, avoid communication with applicants or owners of property that you know have pending land use cases before the Zoning Administrator, Hearings Officer, Planning Commission or City Council, or with those who may have such land use cases in the near future. If your professional or social activities put you in contact with such persons, make it clear that you are not to discuss, or even listen to, any matters concerning the land use case.
2. If you do have a contact regarding a land use case, then at the first public hearing following the ex parte communication, an announcement should be made that the ex parte contact occurred and the substance of the ex parte communication should be placed on the record. In addition, staff should notify the public at the hearing that any party has a right to rebut the substance of the ex parte communication.

Though it would be better to avoid ex parte contacts altogether if possible, the contacts with regard to the McNary Activity Center are not as crucial as, for example, a specific development proposal, such as a subdivision or zone change request. The McNary Activity Center work is a "legislative" decision, and as such, is not as sensitive to ex parte contacts as a specific land use application with specific proponent and opponents.

Please let me know if you have any questions in this regard. Thank you.

ESJ:clt