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## MEMORANDUM

TO: Board of County Commissioners  
Gary Schmidt, County Administrator

FROM: Dan Johnson, Director

DATE: May 4, 2021

RE: Noise Ordinance Variances

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ORS 203.065 and 467.100 grant counties the ability to adopt and enforce noise regulations. On October 1, 2020, the Board adopted comprehensive amendments to the County's noise control regulations, which are codified in Chapter 6.05 of the County Code. The amendments became effective on December 30, 2020.

As part of a second phase of this work, after the October 1<sup>st</sup> adoption, the County Administrator along with representatives from the Sheriff's Office (CCSO), the Department of Transportation and Development (DTD), and County Counsel met to discuss issues around noise variances and to formulate a proposal for the Board's consideration. As a result of this meeting and follow up discussions, the group identified the need to amend three aspects of our current provisions:

- 1) The designation of the Sheriff's Office as the department in charge of evaluating noise variance requests;
- 2) Notice associated with noise variance approvals, and;
- 3) Updating the criteria to reflect that variances would be approved primarily in circumstances that benefitted the general public.

In a November 10, 2020 Policy Session staff presented a proposal that, beginning July 1, 2021, DTD would assume review authority over noise variance requests. This change was suggested due to DTD's specific expertise working with permit applicants, and applying decisional criteria to a permit request. Furthermore, many variance requests are in response to construction activities. Recent variance history, and a breakdown of types of requests, is presented below.

Year	Total Variances	Construction Variances	Non-Construction Variances
2017	30	13	17
2018	24	2	22
2019	16	7	9
2020	15	14	1
2021	2	2	0

While the overall volume of noise variances remains relatively low, the proposal does represent a reallocation of work from one County department to another and there is no indication of what the volume of requests could look like moving forward once DTD assumes responsibility of this program.

In the November 10, 2020 Policy Session, the direction to transfer variances to DTD was also provided with the understanding that DTD would recover its costs for variance review through the implementation of a new fee to be charged to those seeking a variance from the noise standards.

Since the Policy Session in November, as part of developing a revised variance issuance program, staff research into construction variances has brought to light a classification of work the Board may wish to allow outright without a variance. Currently, in County Code “sounds caused by construction activity or by tools, including drills, chain saws, lawnmowers, saws, hammers, and similar tools, between the hours of 7 a.m. to 10 p.m. of the same day” is a category of noise that is exempt under Section 6.05.060.

In reviewing construction variance data from 2017 to 2021, it was determined that the largest category of construction work that seeks variances is work that occurs adjacent to the right-of-way. Specifically, installation of *paving, curbs or ADA ramps; signage / paint / bike / pedestrian lane installation and guardrail or bridge installation*. As this work occurs adjacent to the right-of-way there is a clear advantage to working during non-peak hours, both for worker safety and in order to not inconvenience the traveling public.

Knowing this is largest category of variances, with a compelling reason to be approved, this new information presents an opportunity for the Board to consider expanding the exemption that currently exists in the Code to include these types of construction activities. This approach would eliminate the majority of variances that DTD would expect to receive and process, and could help lower any fee necessary for DTD to assume this work.

With the change in the Board, and in the Board’s general approach to imposing new fees, staff believes it may be appropriate to bring the proposed noise variance revisions to Policy Session in order to see if the Board concurs with the prior direction, or if the Board would like revise the direction given to staff on how to revise the process for reviewing variances to the noise standards. It would also provide the Board the opportunity to give direction on expanding the construction exemptions to include work adjacent to the right-of-way.