

VANADIA, SEEMEL, CECIL, HAVERMAER & HARRISON NOISE VARIANCE APPEAL

ABIGAIL CONSTRUCTION SITE AT 1616 NW 13<sup>TH</sup> AVE

IF YOU WISH TO SPEAK TO CITY COUNCIL, PRINT YOUR NAME, ADDRESS, AND EMAIL.

| NAME (print)    | ADDRESS AND ZIP CODE        | Email                |
|-----------------|-----------------------------|----------------------|
| ✓ Erik Holk     | 2905 SW 1st Ave Portland OR | eholk@webbent.com    |
| ✓ BRIAN JOHNSON | SAME                        | bjohnson@webbent.com |
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March 25, 2015

Dear City Council,

This letter addresses the appeal for noise variances #3569176 and #3558622 scheduled for hearing in City Council Chambers at 2 PM on April 1, 2015.

On March 20, 2015 appellants Gwenn Seemel and David Vanadia met with Chad Stover, Project Manager for the Mayor, as well as Maryhelen Kincaid who was appointed by City Council on February 19, 2015 to lead a Construction Noise Task Force in order to seek an equitable resolution for the construction saturation situation in the north Pearl District and potentially Portland at large.

During our meeting, Chad presented an idea for a possible research based noise study that he had been thinking about over the previous six weeks. He made it very clear that he has limited resources to pursue the study, he was not promising anything and he emphatically encouraged us to reach out to City Council directly.

Also during that meeting, Maryhelen stated that she has a lot of commitments and cannot maintain the level of involvement necessary to follow a long term process and so it was her recommendation that City Council implement a 90-day trial of "Livable Weekends" (details outlined below) in the North Pearl District instituted as an emergency ordinance, which will be active over the coming summer months.

After hearing the City's suggestions, we are updating our appeal as follows:

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To hypothetically and retroactively grant or deny our appeal as it was requested months ago would be a waste of time for both citizens and City Council. What's more, the Noise Board is proposing to amend Title 18 so that future noise variance appeals get heard by the Hearings Officer as opposed to City Council, so the April 1st hearing is an important opportunity for City Council to work with citizens to implement an equitable solution to a chronic problem that will continue to damage livability in Portland for years to come unless immediate action is taken.

Since it is City Council's responsibility to ensure livability for citizens in Portland as outlined in section 18.02.020 of Title 18, we are now asking that City Council implement a 90-day trial in the north Pearl District as recommended by City Council's Construction Noise Task Force. Details are below:

#### **LIVABLE WEEKENDS in a NOISE IMPACT ZONE**

When there are 3 or more construction sites located within a 2 block radius, and a noise-receiving residence that predates the construction exists within that same radius, the area shall be deemed a *Noise Impact Zone* (name suggested by the Noise Office, cited in the city document "Proposed Changes to Title 18, the Noise Code" - <http://www.portlandoregon.gov/oni/article/523591>) inside which NO WORK shall take place from 6

PM on Fridays until 7 AM on Monday. However, variance work can happen Mondays through Fridays for necessary construction activities as usual.

The benefits are as follows:

**Notification** - Clear expectations make for better relations. In a Noise Impact Zone, ongoing notification requirements are waived for construction companies. Residents are alerted to the fact that they are in a Noise Impact Zone that will be loud during the week and quiet during the Livable Weekends.

**Enforcement** - Police will be notified by the Noise Office that Livable Weekends have been enacted within a particular boundary. As a result, police can easily and effectively enforce the ordinance without confusion or hesitation because of the clear and solid rules of the Noise Impact Zone, which also makes it easy for construction companies to follow.

**Livability** - Local activities can proceed as usual on weekends. This is especially important for outdoor events in the park as adults and children will not be endangered by the heavy trucks and machinery that use the roadways during the week. Residents with open windows will enjoy lower amounts of noise and less airborne contaminated dust entering their homes since there will be no construction activity on the work sites.

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**Residential Buildings that will Benefit from Livable Weekends**

The Parker Apartments  
The Wyatt Apartments  
The Sitka Apartments  
The Pinnacle Condos  
The Encore Condos  
The Bridgeport Condos  
The Freedom Center Apartments  
The Ramona Apartments

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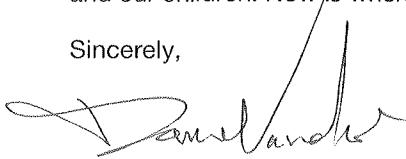
Ovation  
Ecu  
Circle Studio  
Dublin Bay  
Planet Granite  
YoYo Yogi  
Streetcar Bistro  
The Fields Bar and Grill  
Pearl Animal Hospital  
Pure Space  
Friendly House  
Portland Public School at The Ramona

**WHY AN EMERGENCY ORDINANCE**

Our request is the result of over a year of careful study, consideration and communication with police, the Office of Neighborhood Involvement, Noise Office staff, the Noise Board, the Noise Control Officer, noise-impacted citizens and the newly appointed and recently disbanded Construction Noise Task Force. There are no extra costs associated with the implementation of the proposed 90-day trial outlined in this appeal. The trial itself acts as research and so there is no need for external consultants or endless research initiatives that will take longer to get started than multiple construction projects in the Pearl District will take to complete.

Please minimize our exposure to the negative psychological and physiological effects of excessive construction in our neighborhood to preserve and promote the public health, safety and welfare for residents and our children. Now is when we need your help.

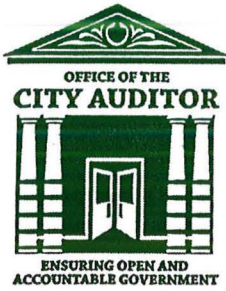
Sincerely,



David Vanadia  
1550 NW 14th Ave. #620  
Portland, Oregon 97209  
(646) 415-1692



Gwenn Seemel  
1550 NW 14th Ave. #620  
Portland, Oregon 97209  
(503) 784-9248



## CITY OF PORTLAND

Office of City Auditor Mary Hull Caballero

**Council / Contracts Division**  
1221 S.W. 4th Avenue, Room 130, Portland, Oregon 97204  
phone: (503) 823-4022  
[www.portlandoregon.gov/auditor/](http://www.portlandoregon.gov/auditor/)



February 18, 2015

David Vanadia  
Gwenn Seemel  
1550 NW 14<sup>th</sup> #620  
Portland, Oregon 97209

Ron and Morgan Cecil  
1550 NW 14<sup>th</sup> #423  
Portland, Oregon 97209

Tahlia Harrison  
1550 NW 14<sup>th</sup> #222  
Portland, Oregon 97209

Jim and Bette Havermaer  
1550 NW 14<sup>th</sup> #507  
Portland, Oregon 97209

RE: Noise Appeal  
Walsh Construction – Variance #3569176

Please be advised the City Auditor's Office is in receipt of your appeal of the noise variance granted to Walsh Construction. A hearing has been scheduled before City Council on April 1, 2015 at 2:00 p.m. The hearing will take place in Council Chambers located in City Hall, 1221 SW 4<sup>th</sup> Avenue on the 2<sup>nd</sup> floor.

If you have any questions, please do not hesitate to contact me at 503-823-4022 or [toni.anderson@portlandoregon.gov](mailto:toni.anderson@portlandoregon.gov).

Sincerely,

Toni Anderson  
Council/Contracts Supervisor  
Office of the City Auditor

Appeal: Walsh Construction Noise Variance #359176

Monday, January 26, 2014

Dear City Council,

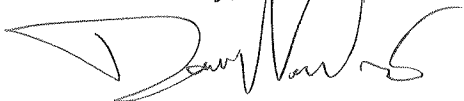
We are writing to **appeal Noise Variance #359176 granted to Walsh Construction**. We live within a two-block radius of the Abigail construction site and we submitted oral testimony against granting this noise variance at the January 14, 2015 Noise Board Meeting, thus our eligibility to appeal.

Walsh Construction conspired with the Noise Control division of the Office of Neighborhood Involvement to unethically and unlawfully issue variance #359176 without due process. Though the construction activity covered by this variance will likely be executed before this appeal is processed, we seek the following simple and reasonable solution for this and future Walsh noise variances:

- 1. Walsh Construction is prevented from doing pre-7 AM variance starts on Saturdays for the duration of the Abigail project.**
- 2. Walsh Construction is prevented from working at all on Sundays (NO WORK from 6 PM Saturday until 7 AM on the following Monday) for the remainder of the Abigail construction project.**
- 3. Walsh Construction is to post a sign at their work site specifying that no work will happen during the hours of 6 PM on Saturdays until 7 AM on Sundays nor before 7 AM on Mondays or Saturdays for the duration of the project. The sign should also including a police phone number for neighbors to call if work is performed.**
- 4. Walsh Construction, Bridge Housing, Noise Control, Portland Police and City Council provide the community with a written agreement to enact and enforce this agreement.**

Having Monday and Saturday mornings before 7 AM and Sundays off means residents can know that we have some respite in our construction-saturated neighborhood so we can relax with family, entertain visitors, enjoy local parks, expect no street closings and not be overwhelmed by workers, their cars, large construction vehicles and noise—all of which will help provide at least a semblance of livability in our neighborhood. We feel this agreement will reduce noise complaints in our area overall.

Sincerely,



David Vanadia  
1550 NW 14th #620  
Portland, OR 97209  
Cell: (646) 415-1692



Gwenn Seemel  
1550 NW 14th #620  
Portland, OR 97209  
Cell: (503) 784-9248

Ren Cecil

1550 NW 14<sup>th</sup> #423

PDX 97209

Morgan S.

1550 NW 14<sup>th</sup> #423

PDX 97209

Taulia Harrison

1550 NW 14<sup>th</sup> Ave #222

Portland, OR 97209

Jim & Bette Norman

1550 NW 14<sup>th</sup> Ave #507

Portland OR 97209



## Noise Variance / Permit

**Application #:** 3569176

**Applicant:** WALSH CONSTRUCTION \*JOEY BOWLES\*  
2905 SW FIRST AVENUE  
PORTLAND, OR 97201

**Organization:**

**Activity:** CONSTRUCTION - CONCRETE POURS

**Event Location:** 1616 NW 13TH AVE

**Date(s):** 2 days between Jan 21, 2015 and Feb 7, 2015 – THESE VARIANCE DATES MAY BE AMENDED FOLLOWING THE FEB 11, 2015 NOISE REVIEW BOARD MEETING.

**Hours:** 5:00 AM - 8:00 PM

**FILE COPY**

Application for the above has been reviewed by the Noise Control Officer, City of Portland, and is hereby:

### Approved, with the following conditions:

- A. The variance shall run FOR 2 DAYS BETWEEN January 21, 2015 and February 7, 2015. The hours of the variances construction shall be from 5:00 a.m. to 8:00 p.m.
- B. From 6:00 p.m. until 9:30 p.m., the contractor will be required to use 'smart alarm' back up beepers, instead of a standard reversal alarm, for all equipment activity. After 9:30 p.m. and until 7 a.m. the following morning, back up alarms will be disconnected and spotters will be used to safely back up vehicles.
- C. The Applicant shall work to utilize a direct connection to power whenever possible. Use of gasoline or diesel generators or other stationary equipment will be isolated from any residential neighbors with the safe use of a 3/4 inch plywood enclosure that does not impact the need of the unit to be properly ventilated.
- D. The Applicant will send complaint reports along with a complaint log and details of how the problem was resolved to the City of Portland Noise Control Officer. These logs can be faxed to the Noise Office at (503) 823-7915 with a follow-up call to (503) 823-7350 to verify receipt of fax.
- E. On Sundays no work shall be permitted during the duration of the variance time period.
- F. Notice shall be given to residents of the Parker and Ramona Apartments. The notice will include a contact person and phone number for construction noise issues. Initial notice will be delivered to the front desk of both apartments with enough copies for all residents. As concrete dates get firmed up, one notice per apartment building will be required, with the understanding that the apartment manager will post the notice in a public place.



The notice shall include the nature of the work and the anticipated noise sources that neighbors will hear during the period of the variances work activity.

G. The Applicant shall be prepared to develop a noise mitigation plan with the Noise Control Officer should complaints arise.

H. The noise variance will be reviewed upon receipt of complaints. If complaints are filed, the Noise Control Officer may modify the variance, as needed, to resolve community noise disturbances.

I. The Applicant will notify the Noise Control Officer by the next morning if the variance was needed to work outside the normally permitted construction hours. The Applicant will keep a running tally of variances days used. This log shall be made available to the Noise Control Officer upon request.

**To the Applicant:**

1. Carry this document with you during the activity. This is not a permit to make more noise than is minimally necessary for your needs.
2. Violation of the conditions of this variance constitutes grounds for revocation of the variance, and denial of future applications, and may also result in the issuance of citation(s) for violations of City Code.
3. If a Police or Noise Control Officer should appear, his/her instructions will supersede this variance and take precedence.

Date:

Issued: January 21, 2015



Paul van Orden, Noise Control Officer

March 25, 2015

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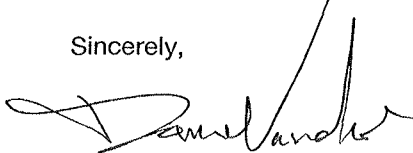
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Portland, Oregon 97209  
(646) 415-1692



Gwenn Seemel  
1550 NW 14th Ave. #620  
Portland, Oregon 97209  
(503) 784-9248

## IMPACT STATEMENT

**Legislation title:** Appeal of David Vanadia, Gwenn Seemel, Ron and Morgan Cecil, Jim and Bette Havermaer and Tahlia Harrison against the noise variance granted to Walsh Construction for the Abigail construction site located at 1616 NW 13<sup>th</sup> Avenue

**Contact name:** Toni Anderson  
**Contact phone:** 503-823-4022

**Purpose of proposed legislation and background information:**

The purpose of this Council item is to provide the appellants, David Vanadia, Gwenn Seemel, Ron and Morgan Cecil, Jim and Bette Havermaer and Tahlia Harrison, the opportunity to appeal the City's Noise Control Officer's Noise Variance/Permit # 3569176 granted to Walsh Construction for the Abigail construction project. Appeals to City Council of variance decisions may be submitted by the "applicant, his legal representative, any affected neighborhood association, or any person who has submitted oral or written testimony on the application" per Portland City Code Section 18.14.020 I.1.

Per 18.14.020 I.3., the Auditor upon receipt of an appeal shall place the matter on the agenda.

**Financial and budgetary impacts:**

This Council item will not generate or reduce current or future revenue coming to the City. There are no costs to the City as a result of this Council item.

**Community impacts and community involvement:**

Public notification of the Walsh Construction's noise variance application was required per the Noise Control Officer's decision. No future public involvement is anticipated or considered necessary for this Council item. After the City Council has made its decision on this appeal, there is no further opportunity for public involvement at the City level.

### Budgetary Impact Worksheet

**Does this action change appropriations?**


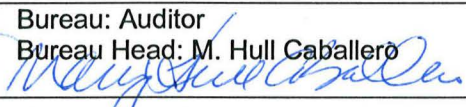
**YES:** Please complete the information below.

**NO:** Skip this section

| Fund | Fund Center | Commitment Item | Functional Area | Funded Program | Grant | Sponsored Program | Amount |
|------|-------------|-----------------|-----------------|----------------|-------|-------------------|--------|
|      |             |                 |                 |                |       |                   |        |
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|      |             |                 |                 |                |       |                   |        |

Agenda No.  
**REPORT**  
Title

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|  |   |
|--|---|
| <p align="center"><b>INTRODUCED BY</b><br/>Commissioner/Auditor:<br/>Mary Hull Caballero</p>   | <p>CLERK USE: DATE FILED <u>MAR 27 2015</u></p>   |
| <p align="center"><b>COMMISSIONER APPROVAL</b></p> <p>Mayor—Finance and Administration - Hales</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Novick</p>               | <p align="center">Mary Hull Caballero<br/>Auditor of the City of Portland</p> <p>By:  _____<br/>Deputy</p> |
| <p align="center"><b>BUREAU APPROVAL</b></p> <p>Bureau: Auditor<br/>Bureau Head: M. Hull Caballero<br/></p> <p>Prepared by: T. Anderson<br/>Date Prepared: 3/23/2015</p> | <p><b>ACTION TAKEN:</b></p> <p align="center">APR 01 2015    <b>APPEAL DENIED</b></p>   |
| <p>Impact Statement<br/>Completed <input checked="" type="checkbox"/>    Amends Budget <input type="checkbox"/></p>  |   |
| <p><b>City Auditor Office Approval:</b><br/>required for Code Ordinances</p>   |   |
| <p><b>City Attorney Approval:</b><br/>required for contract, code, easement,<br/>franchise, charter, Comp Plan</p>   |   |
| <p>Council Meeting Date    4/1/2015</p>  |   |

**AGENDA**

**TIME CERTAIN**   
Start time: 2:00

**Total amount of time needed: 1 hr**  
(for presentation, testimony and discussion)

**CONSENT**

**REGULAR**   
**Total amount of time needed:** \_\_\_\_\_  
(for presentation, testimony and discussion)

| FOUR-FIFTHS AGENDA | COMMISSIONERS VOTED AS FOLLOWS: |      |      |
|--------------------|---------------------------------|------|------|
|                    |                                 | YEAS | NAYS |
| 1. Fritz           | 1. Fritz                        | ✓    |      |
| 2. Fish            | 2. Fish                         | ✓    |      |
| 3. Saltzman        | 3. Saltzman                     | ✓    |      |
| 4. Novick          | 4. Novick                       | ✓    |      |
| Hales              | Hales                           | ✓    |      |