



## Howard County Citizens Association

Since 1961...

*The Voice Of The People of Howard County*

Date: 10 Sept 2015

Subject: Please Act on Howard County Noise Concerns

Dear Howard County State Delegation, County Executive, and Council Members,

As you know this year there has been a sharp increase in the number of excessive noise complaints registered against Merriweather Post Pavilion (MPP). Executive Kittleman wrote a letter to Stu Kohn, President of the Howard County Citizens Association (HCCA), dated July 14th, 2015 detailing the actions to be taken by MPP to control the noise and the steps to be taken by the County to monitor the noise. Unfortunately that is not working. The residents are still registering excessive noise complaints and feeling the bass notes in their homes and on their bodies.

The HCCA Board of Directors unanimously approved that action needs to be taken by our County Officials in an attempt to reduce the noise at MPP and to enforce the rules. HCCA requests that a meeting be established ASAP (hopefully within the next month) with you and the concerned citizens to fully discuss the situation with your constituents and hopefully resolve the issue. HCCA would be more than willing to assist in the coordination of such a meeting. Our goal is to prevent this nuisance from occurring next year.

The Code of Maryland, Environment section 3-102 states:

“The General Assembly finds:

- (1) That the people of this State have a right to an environment that is free from any noise that:
  - (i) May jeopardize their health, general welfare, or property; or
  - (ii) Degrades the quality of their lives; and
- (2) That there is a substantial body of knowledge about the adverse effects of excessive noise on the public health, the general welfare, and property, and that this knowledge should be used to develop environmental noise standards that will protect the public health, the general welfare, and property with an adequate margin of safety.”

We feel the residents have the right to the quiet enjoyment of their properties. We also feel that all of you have a role to play to help achieve that goal. After stating some facts relevant to this situation below we then have listed actions we think you should consider taking. This is not an exhaustive list, but we think it would be a good starting point for discussions.

**WHEREAS**, the Merriweather Post Pavilion (MPP) management has not kept faith with the Howard County Delegation regarding what to expect from the increased noise limits. The Baltimore Sun published an online article February 27, 2013 titled *Delegation approves Merriweather noise legislation*. This article can be found at: <http://www.baltimoresun.com/news/maryland/howard/columbia/ph-merriweather-noise-20130227-story.html>

This article when describing a conversation with Merriweather General Manager Jean Parker stated ‘She has said that this bill does not mean acts at Merriweather will play louder. Instead, it codifies county law to reflect how the concert venue has operated for years. "It's certainly not going to get any louder" Parker said.’

The high number of noise complaints from much farther distances this year clearly indicates that MPP is producing more noise.

**WHEREAS**, there is no current legislative nor regulatory limit on the amount of noise that MPP can produce. The 2013 legislation, HB-1514, modified the Code of Maryland Environment section 3-401 to block limits, rules and regulations from prohibiting noise generation up to certain limits at certain times, but does not itself impose those limits as a maximum.

Section 3-401 states:

“(7) (i) Except as provided in subparagraph (ii) of this paragraph, in Howard County, the sound level limits and noise control rules and regulations adopted under this subsection may not prohibit the electronic amplification of sound at an outdoor concert venue with a capacity of over 15,000 individuals that:

1. Within the area that is included in a 0.25 mile radius of the venue, produces sound that is:
  - A. 95 dba or lower between 9:00 a.m. and 11:00 p.m.; and
  - B. 55 dba or lower between 11:00 p.m. and 11:30 p.m.; and
2. Within the area that is outside a 0.25 mile radius of the venue, produces sound that is:
  - A. 72.5 dba or lower between 9:00 a.m. and 11:00 p.m.; and
  - B. 55 dba or lower between 11:00 p.m. and 11:30 p.m.

(ii) 1. Except as provided in sub subparagraph 2 of this subparagraph, an outdoor concert venue with a capacity of over 15,000 individuals may not produce any electronic amplification of sound between 11:30 p.m. and 9:00 a.m.”

The Code of Maryland, Environment section 3-401 goes on to state:

“(iii) Notwithstanding § 3-105(a)(1) and (2) of this title, the noise control ordinances, rules, or regulations adopted by Howard County and in effect on October 1, 2013, do not apply to the electronic amplification of sound at an outdoor concert venue in the county with a capacity of over 15,000 individuals.”

This passage effectively blocks Howard County’s pre-existing ordinances and regulations from being applied to MPP.

**WHEREAS**, the only current operative Howard County noise limit covering any of the county is a maximum of 90 dBA from construction or demolition-site activities. The rest of the Howard County Noise regulation, Section 8.900, references dBA limits from a COMAR table that no longer exists. Furthermore what noise limits do appear in COMAR 26.02.03.02 Environmental Noise Standards are stated to represent ‘goals’ which would indicate they are not binding.

**WHEREAS**, on August 27, 2015 a federal jury decided that Frederick County officials acted appropriately when they terminated an outdoor music festival after receiving several noise complaints. This judgment meant that the County was not responsible for the promoter’s lost income, nor liable for punitive damages, attorney fees and court costs. The story can be found at:

[http://www.fredericknewspost.com/news/politics\\_and\\_government/jury-sides-with-frederick-county-in-lawsuit-over-shutdown-of/article\\_ca9f8c92-a87f-5217-9ca0-f8dc2221097d.html](http://www.fredericknewspost.com/news/politics_and_government/jury-sides-with-frederick-county-in-lawsuit-over-shutdown-of/article_ca9f8c92-a87f-5217-9ca0-f8dc2221097d.html)

**WHEREAS**, the Howard County Code Section 12.110 – Nuisances states:

“(a) Definition:

- (1) A *nuisance* occurs on property when the person who owns or rents the property:

.  
.

(iii) Allows activities to take place on the property which interfere with another's proper use or enjoyment of property."

**WHEREAS**, even if the prior noise limits expressed in terms of maximum dBA measurements were re-instated their enforcement would not necessarily protect the residents from the bass note booming they hear and feel within their residences. DBA is the "A" weighting scale applied to the raw decibel (dB) measurements. This scale has different weightings for each octave band. A frequency is said to be an octave in width when the upper band frequency is twice the lower band frequency.

The "A" scale was developed when the only goal was to protect human hearing, and emphasizes the mid-frequency range (1KHz – 6KHz) of human hearing. It significantly de-weights the low and high frequency noise present, and a noise measurement in terms of dBA includes very little contribution from even high raw dB values present at these frequencies. It is the very low frequencies that travel the farthest, penetrate people's buildings and bodies, and are the cause of most of the excessive noise complaints.

**WHEREAS**, even if there were noise limits covering Howard County, the maximum fine for noise violations is so low that it would do nothing to deter repeat violations from a financially large offender. COMAR 26.02.03.05 Penalties allows for up to a \$10,000 penalty for each day of violation. However the current 'enforcer' of noise regulations, Howard County, Noise regulation, Section 8.900, allows only a maximum fine of \$100. Neither maximum penalty is adequate to deter an offender the size of MPP. Note that the Howard County Noise regulation does allow for imprisonment for up to 30 days.

**WHEREAS**, there are no noise limits within facilities nor properties generating noise to protect peoples' hearing. Both COMAR 26.02.03.02 Environmental Noise Standards and the Howard County Noise regulation, Section 8.900, state:

"The measurement of noise levels ... shall be conducted at points on or within the property line of the receiving property or the boundary of a zoning district, and may be conducted at any point for the determination of identity in multiple source situations."

**WHEREAS**, the Cerami & Associates *Merriweather Post Pavilion Acoustical Report: A004* dated August 19, 2015 used a noise measurement methodology appropriate for workplace environments, not a methodology appropriate for assessing the noise annoyance level to the surrounding community. The measurement parameter this methodology used was "one-minute time-averaged noise level." This smooths out any noise peaks so that repetitive spikes would not appear in the measurements. Also the measurements were taken using the "A" weighting scale (dBA) that de-weights very low frequency noise by as much as 50 dB from the actual dB measured. Thus the measurements contained very little contribution from the very low repetitive bass notes that residents have complained about hearing and feeling within their homes.

**WHEREAS**, the Cerami & Associates *Merriweather Post Pavilion Acoustical Report: A004* dated August 19, 2015 reported noise measurements within MPP that would in less than one hour exceed the Occupational Safety and Health Administration's (OSHA) Noise Regulations for the maximum Permissible Exposure Limit (PEL) within an 8-hour workday. Most MPP concerts last far longer than one hour.

**WHEREAS**, although the Howard County Department of Planning and Zoning had recommended that "A noise study and mitigation plan based on Department of Health recommendations is required to be submitted with any redline or Site Development Plan for future renovations or expansions of Merriweather Post Pavilion.", the Howard County Planning Board decided September 3, 2015 that a noise mitigation plan would only be required

“if the noise study indicates the applicable noise standard will be exceeded.” As pointed out earlier, there are no applicable noise limits except the OSHA standards for workers.

## **RECOMMENDATIONS**

### **A. Howard County State Delegation**

**Undo the 2013 noise limit increase legislation and return control of noise legislation to the County.**

**Amend COMAR 26.02.03.05 Penalties to allow for penalties commensurate with the violation.**

The current \$10,000 maximum penalty can simply be treated as a cost of doing business for a venue with a capacity of over 15,000 individuals.

The residents deserve immediate relief. It is time for the Delegation to make things right for MPP’s neighboring communities.

**Propose more mature noise legislation.**

The Code of Maryland Environment section 3-105 states: “A political subdivision may not adopt any noise control ordinance, rule, or regulation that is less stringent than the environmental noise standards, sound level limits, and noise control rules and regulations adopted under this title.” From this it appears that Maryland at the state level expects to set the upper limits on noise generation, but allows individual political subdivisions to set lower limits.

The noise control portion of the Code of Maryland needs to be updated to modern times. At its simplest this could just be inclusion of the aforementioned dBA and dBC limits. However we understand that noise induced hearing loss (NIHL) is a result of too much noise within a given time span. We hear that European countries are far ahead of the U.S. in terms of controlling the total noise load their resident’s experience.

Also, there are no current limits on noise within facilities or property limits to protect the hearing of those within. OSHA appears to have some limits for the workers in workplaces even though they are not necessarily enforced, but these do not apply to the non-workers present.

Maryland prides itself on being progressive about how it protects its residents. This overlooked area is long overdue for attention.

### **B. Howard County Council**

**Amend Noise regulation Section 8.900 to either reference or include correct dBA maximum limits.**

**Amend Noise regulation Section 8.900 to allow for noise violation penalties up to the maximum allowed by COMAR.**

**Limit the volume of low bass notes that residents hear and feel in their homes.**

There is a “C” weighting scale that is much more level across the entire range of human hearing than the “A” weighting. A noise measurement in terms of dBC much more completely represents the total amount of noise present. “C” Weighting is usually used for Peak measurements and also in some entertainment noise measurement, where the transmission of bass noise can be a problem. Due to the difference in weighting scales it is possible to produce noise that measures 95 dBA but that only measures 94 dBC with only a little of the bass booming noise allowed by 95 dBA.

The County should enact noise maximum limits with the same numerical and distance limits as specified by the 2013 legislation for an outdoor concert venue with a capacity of over 15,000 individuals or for the then current state specified limits, but specify both dBA and dBC limitations rather than just dBA limitations. This would not prohibit such a venue from producing 95 dBA noise, but would qualify how it does so that it would not include the loud bass notes to the degree that is obviously bothering residents today. There are noise measurement devices that measure both in terms of dBA and dBC.

**Determine what types of concert venues are appropriate for intra-city locations.**

Rolling Stones magazine’s four top rated outdoor concert venues are:

- Red Rocks Amphitheatre in Morrison, Colorado set among the rocks.
- Gorge Amphitheatre in George, WA overlooking the Columbia River.
- Hollywood Bowl in Los Angeles, CA.
- Merriweather Post Pavilion in Columbia, MD.

The first two are pretty isolated with few residents nearby; although as previously noted even Red Rocks Amphitheatre has resident noise complaint issues. The Hollywood Bowl has a few residents nearby, but the Los Angeles noise code limits the noise level at the boundary of a residential area to the standard noise limit of a residential area. Only Merriweather Post Pavilion stands out as to the amount of noise it is allowed to propagate to dense residential areas.

The situation of outdoor concert venues growing in size and the amount of noise generated is analogous to the decades ago situation of airports growing in size and the amount of noise generated. As airports grew restrictions were put in place. In Denver the airport was moved about 15 miles farther east of city center into open land. In Los Angeles large tracts of residential land east of the airport were condemned and the housing removed. And airports do not generate the loud repetitive thumping noise that modern concerts do.

The County Council should consider whether keeping MPP in its current format with its current noise generation privileges juxtaposed next to the town center they are trying to develop into a city is really appropriate.

**Develop appropriate noise limits for areas within facilities and property limits open to the public.**

Howard County especially prides itself on being progressive about the care and provisions tendered to its residents. This county recently enacted legislation limiting the amount of sugary calorie-laden drinks and food items in vending machines on county property. Previously it banned smoking from county and private property such as commercial establishments. Excessive noise falls into the same category as a health risk, and should be treated similarly.

Some other jurisdictions either have or are considering also imposing dBC limits in addition to dBA limits to protect their residents from the loud thumping noises. Red Rocks Amphitheatre in Colorado is Rolling Stones magazine's top rated outdoor concert venue. Please see the article about what officials did earlier this year to limit the noise, especially the bass noise, from this venue:

[http://www.denverpost.com/golden/ci\\_27278380/denver-presents-new-rules-red-rocks-noise-again?source=rss](http://www.denverpost.com/golden/ci_27278380/denver-presents-new-rules-red-rocks-noise-again?source=rss)

**Consider implementing action plans with short-term, medium-term and long-term objectives for reducing noise levels.**

**C. Howard County Executive**

**Enable and instruct Howard County enforcement officials to take immediate action.**

It appears that even when the Howard County Police or Environmental Health personnel take sound measurements, they are not able to interpret them in the field. I have been told they need to return their sound meters to the Health Department to upload and analyze the readings, and subsequently the Health Department will take enforcement action if they deem it justified. This does nothing to protect the community in real time. If the Police observed someone pouring diesel fuel into one of our lakes the Police would halt it immediately, not just issue a warning or say we may get back to you. Excessive noise is also a pollutant and should be treated similarly.

**Until Howard County has operative noise limits, instruct Howard County enforcement officials to treat noise complaints as nuisance complaints under Howard County regulation Section 12.110 Nuisances.**

**Impose consequences commensurate with the violation if one occurs to deter repeat occurrences.**

The fines we have heard were levied on MPP due to the noise violations for the May 30th and May 31st noise violations were insignificant. Noise generators either in violation of the established noise limits or deemed to be creating a nuisance should be told to lower the volume immediately, and then the event terminated within three minutes if they do not comply. Repeat occurrences within the same day should cause immediate event termination.

Sincerely,

Stu Kohn  
HCCA, President