



# City Council Agenda Bill

# 20035

Bill Number

**Subject:** Noise Variance Request for the Boulevard Park Shoreline Improvement Project

**Summary Statement:** City council approved bid award for this project on May 13, 2013. Shoreline improvements at Boulevard Park will reduce erosion & flooding, improve public access to the water, & improve nearshore habitat conditions. Regulatory permits require that work be completed during low tide, which at this time of year occur during evening & early morning hours, which are outside of the allowable time for construction noise per Bellingham Municipal Code 10.24.120C(4). Work after 10pm & before 7am requires a variance approval from City Council, which may be granted for the construction or repair of a public facility or utility upon a finding that it is either necessary or in the public interest. Nightwork may occur during low tides from July 16 through Oct. 14

**Previous Council Action:** Bid Award Approved May 13, 2013, Greenway Levy 3 Ordinance #2006-03-033, Park Project Update at March 2013 City Council Meeting, budget approval

**Fiscal Impact:** The lowest bid, including a contingency for change orders and additional permitting requirements, is within the amount budgeted for this project. Any amount remaining at the end of this project will be returned to the funding source.

**Funding Source:** Beyond Greenway Levy \$367,610.50, Park Impact Fees \$200,000

**Attachments:** Vicinity Map  
Bellingham Municipal Code 10.24.120

| Meeting Activity                                | Meeting Date | Staff Recommendation | Presented By              | Time  |
|-------------------------------------------------|--------------|----------------------|---------------------------|-------|
| Committee Briefing<br>Council Vote<br>Requested | 01-Jul-2013  | Vote to Approve      | James King, Park Director | 5 min |

**Council Committee:**

**Parks & Recreation**  
Gene Knutson, Chair  
Stan Snapp; Terry Bornemann

**Committee Actions:**

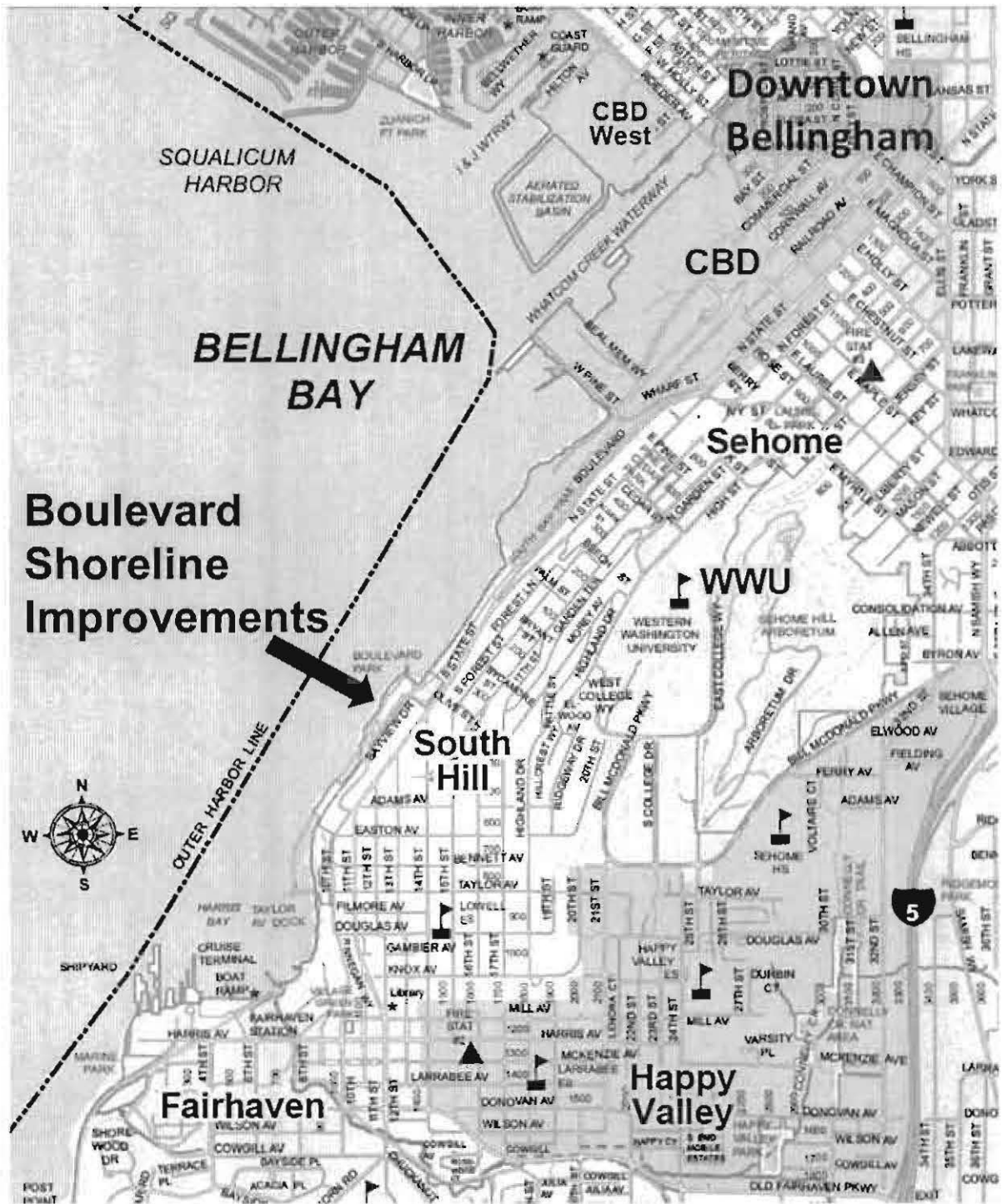
**Agenda Bill Contact:**

Leslie Bryson, D&D Manager

| Reviewed By               | Initials | Date    |
|---------------------------|----------|---------|
| James King, Park Director |          | 4/14/13 |

|       |  |         |
|-------|--|---------|
| Legal |  | 6/17/13 |
| Mayor |  | 6-18-13 |

**Council Action:**



Vicinity Map  
Boulevard Park Shoreline Improvements  
June 14, 2013

BMC 10.24.120 Public disturbance noise.

A. Declaration of Policy. It is the policy of the city to minimize the exposure of all city residents to excessive noise and to preserve the public health, safety, and welfare. It is also the express intent of the city council to control the level of noise in a manner which promotes commerce; the uses, value and enjoyment of property, including music venues in commercial districts; while continuing to protect sleep and repose of residents, and the quality of the environment.

It is further the intent of city council to recognize that music venues add to the vibrancy and economic vitality of the city and to create entertainment districts in the city which would promote and encourage this type of activity while continuing to protect the area residents from excessive noise emanating from those venues.

B. Entertainment Districts Established. There is hereby established a downtown entertainment district and a Fairhaven entertainment district.

The downtown entertainment district is depicted in Figure 10.24.120(A), and includes both sides of the perimeter streets.

The Fairhaven entertainment district is depicted in Figure 10.24.120(B), and includes both sides of the perimeter streets.

C. It is unlawful for any person to cause, or for any person in possession of property to allow to originate from the property, sound that is a public disturbance noise. The following sounds are determined to be public disturbance noises:

1. Frequent, repetitive or continuous sounds in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle or internal combustion engine within a residentially zoned area, so as to unreasonably disturb or interfere with the peace, comfort and repose of others.
2. Frequent, repetitive or continuous sounds which emanate from any building, structure, apartment, or condominium, which unreasonably disturb the peace, comfort, and repose of a person or persons on public or private property, other than the property from which the sound emanates, such as sounds from musical instruments, audio sound systems, band sessions.
3. Sound from portable audio equipment, such as tape players, radios, and compact disc players, operated at a volume so as to be audible greater than 50 feet from the source and outside the property of the operator.
4. Construction and industrial noises, including, but not limited to, motorized construction and equipment operation, hammering, blasting, drilling and sawing in residentially zoned areas, between the hours of 10:00 p.m. and 7:00 a.m., which unreasonably disturb or interfere with the peace, comfort and repose of others; provided, that this subsection shall not apply to noises caused by projects required in an emergency to repair public facilities or utilities or to prevent immediate damage or harm to persons

or property; and further provided, that this subsection shall not apply if the city council grants a variance from the provisions of this subsection for the construction or repair of a public facility or utility upon a finding that it is either necessary or in the public interest for all or a portion of the work to be performed between the hours of 10:00 p.m. and 7:00 a.m. The council may impose such conditions as it deems appropriate upon the granting of a variance.

5. Subsections (C)(2) and (3) of this section shall not apply to regularly scheduled events at parks, such as public address systems for games and activities or park concerts; provided, that the foregoing enumeration of acts and noises not be construed as excluding other acts and noises which offend the public peace.

6. In considering whether or not sounds emanating from music venues in the entertainment districts unreasonably disturb the peace, comfort and repose of others, the following factors shall be considered:

- a. The time of day or night the sound occurs;
- b. The duration and volume of the sound;
- c. The nature of the sound;
- d. The location of the industry or business from where the sound originates, including consideration of surroundings; and
- e. The location of the complaint.

The above list of factors is nonexhaustive. The totality of the circumstances should be considered and other factors not listed may also be considered in determining whether or not sound unreasonably disturbs the peace and repose of others as provided in BMC 10.24.120(C)(2).

#### D. Penalties.

1. Any person violating this section shall, upon commission of the first such offense, be guilty of having committed a civil infraction, and shall be punished by a fine not to exceed \$250.00.

2. Any person violating this section shall, upon conviction for a second or subsequent offense, be guilty of having committed a criminal misdemeanor and shall be punished by a fine not to exceed \$500.00 or imprisonment not to exceed 90 days, or by both such fine and imprisonment.

[Ord. 2010-12-070; Ord. 2001-07-055; Ord. 10912 § 12, 1997].