

6 December 2023

To: Saint Paul City Council – Public Hearing Packet
Dan Niziolek, Deputy Director, DSI
Andy Rodriguez, Director, Parks and Recreation
Tyler McKean, Program supervisor, Parks and Recreation
Shevek McKee, Executive Director, District 10 Community Council
Lancer Management, Tony Arvidson, Mike Renner

From: East Como Neighbors (see names, addresses below)

RE: Comments on An Ordinance Amending Chapter 293 of the Saint Paul Legislative Code

We find the proposed amendments make sense and we are generally supportive. Our comments here are in reference to noise-producing events and activities at and around the **Como Park Pavilion**. In this regard, we find that while the proposed amendments do not significantly mitigate our concerns, neither do they appear to significantly undermine our concerns.

We are submitting our comments at this time to share our concerns as well as our intentions to continue working cooperatively with Parks and Lancer staff informally and, we hope, outside the strict provisions of this ordinance.

History of Neighborhood Concerns

The Como Park Pavilion hosts more than 100 community and private events each season. These events, with very few exceptions, create sound that carries over Como Lake into our neighborhood. We understand and appreciate the value this adds to the larger community, but we are also impacted by the almost daily intrusion this creates during the summer season.

After expressing our concerns to Parks and Lancer (the Pavilion's concessionaire) staff over the past couple of seasons, we have developed a positive, working relationship that has resulted in improvements that have gone some way to allaying our concerns. We intend to continue working with Parks and Lancer staff to further refine sound management operations for events at the Pavilion. We very much appreciate the responsiveness of both Lancer and City staff on this issue.

History of Intrusive Sound Concerns

The City's ordinance (current and proposed, *Sec. 293.02.a.1*) generally makes it unlawful to "*make, continue, permit or cause to be made, continued or permitted within the city, any loud, disturbing or excessive noise which would be likely to cause significant discomfort or annoyance to a reasonable person of ordinary sensitivities in the area.*"

To that end, the ordinance goes on to specify objective limits for sound levels, allowable hours, etc. (Table 1, Sec. 293.07.a), which for our neighborhood is 65 dBA during daytime hours.

While an occasional event that generates sound levels of 65 dBA within a neighborhood may be considered reasonable, experiencing this volume for the numerous, season-spanning events at the Pavilion creates a cumulative effect that is tiresome and intrusive and goes beyond the intent of the ordinance – in other words, **the cumulative impacts are an annoyance to a reasonable person.**

As we have gathered input from our neighbors, there are several who preferred not to be included here as they have grown weary of an ongoing battle. Several decades-long residents indicated they now just go inside and close their windows when Pavilion sound levels are excessive. We think this is an **unreasonable** way to achieve peace and quiet in our homes.

The D10 Como Community Plan (<https://district10comopark.org/wp-content/uploads/2019/07/District-10-Como-Community-Plan-2015.pdf>), adopted in 2016, includes this strategy, which also demonstrates a history of concerns:

ENV 2.3. Support efforts to mitigate intrusive noise pollution in the neighborhood. ENV 2.3.1. Work with the Como Park Regional Park Advisory Committee to develop strategies to mitigate noise pollution from Como Regional Park, especially Como Town and large Park events using amplified sound.

Cooperative Working Relationship

Over the past two seasons, we have been working cooperatively with City Parks and Lancer staff to address our concerns. We'd like to continue this positive working relationship, which has resulted in improvements in sound management. At this time, Parks staff have developed an operational plan for the Pavilion that includes:

- ☐ The City has purchased and installed a new sound system for the Pavilion, which once calibrated, will limit amplified sound levels to predetermined levels in our neighborhood.
- ☐ Nearly all events using amplified sound will be required to use this sound system. Unique performer setups may necessitate supplemental equipment, but these will be operated within the same parameters as the house system.
- ☐
- ☐ Generally, no amplified sound will occur after 9 p.m., though events may continue past this time.

As described above, the progress we have made in managing sound levels has been positive. We emphasize this has been accomplished cooperatively with City Parks and Lancer staff.

While still an intrusion, we understand the Pavilion is a community resource. This plan balances the use and enjoyment of the Park facility with our reasonable expectation for peace and quiet in our homes and yards.

We feel we have acted in good faith, but do not wish further intrusiveness from amplified sound at the Como Pavilion.

We expect our continued cooperative relationship with City and Lancer staff will achieve this goal.

The City's Noise Ordinance and the Pavilion

The noise ordinance, as amended (293.09), permits amplified sound in residential areas at 80 dBA (measured within 50 feet of the sound source) until 10 p.m. (weekdays) and 11 p.m. (weekends) for durations of up to 12 hours/day, 24 hours/7 days or 36 hours/28 days. These durations seem excessive.

We request Parks staff to update their operational plan to allow for shorter durations.

This provision for measuring amplified sound from the source is inconsistent or in conflict with the earlier provision on sound levels allowed to be received within neighborhoods. There is a presumption with respect to events at the Pavilion that 80 dBA produced would be diminished to 65 dBA by the time sound reaches our neighborhood. Sound propagating over water is more challenging, but we have confidence that tweaking the new sound system with neighborhood input will be successful. However, the amended ordinance now permits expanded hours and durations.

We have been assured by City staff that the Pavilion operational plan (described above) would practically supersede these limits.

Variances in the Proposed Ordinance

Variances are required for amplified sound permits exceeding Permitted thresholds. The City Council has the authority to grant variances under conditions specified in Sec. 293.10. Two particular provisions of concern to us are – Public Notice and Unreasonable Hardship.

Public Notice. The ordinance requires notice to all property owners within 300 feet of the source of the amplified sound. With respect to the Como Pavilion, there are no residential or non-park properties within this radius. It is unclear whether or how we would receive notification should amplified sound level variance be considered.

We request that if variances are requested, either administratively or more formally, we receive notice either directly or as published via the District 10 Community Council.

Unreasonable Hardship. A variance request may be considered only if the City Council finds an unreasonable hardship exists.

Given that 80 dBA within 50 feet is described (in DSI's announcement) as "similar to a passing semi truck from a few feet away," it is difficult to envision a justifiable hardship for an applicant holding an event in the Pavilion, as the entire Promenade space is about 50 feet from the sound

system. Furthermore, hearing damage begins to occur at levels above 80 dBA after only a couple of hours, and after shorter durations for louder sounds (https://www.cdc.gov/nceh/hearing_loss/what_noises_cause_hearing_loss.html).

As you know, the decibel scale is logarithmic, meaning sound intensity is perceived to double with every 10 dBA increase – so people experience 80 dBA as twice as loud as 70, 90 dBA as 4 times louder than 70 dBA, etc.

We think there is no reasonable argument for a hardship for sound levels louder than 80 dBA.

Considering our unique situation involving the many events at the Pavilion, we can't imagine how the City could find that further impacts to the neighborhood could be outweighed by permitting amplified sound level variances.

We request the City or the Parks Department weigh these concerns in consideration of possible variance requests for events at the Como Pavilion.

Overall

We think our situation across from the Como Park Pavilion is deserving of unique consideration for amplified sound management and regulation. We have been gratified in the responsiveness of City and Lancer staff to mitigating and managing sound levels – and we point out this has occurred substantially through cooperation and positive communication. Our intention is to continue in this manner. To the extent amplified sound levels may be considered outside the guidelines we have mutually developed, we request we be given adequate opportunity to have input and express our concerns.

Respectfully submitted,

East Como Neighbors

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Rich Fundakowski, 1238 Como Blvd E
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