



Promote the common good

OFFICE OF  
Community  
& Civic Life

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## **FINDINGS AND DECISION OF THE NOISE REVIEW BOARD**

APPLICANT: OREGON DEPARTMENT OF TRANSPORTATION \*ROBERT DEVASSIE\*

VARIANCE NUMBER: 18-278298-000-00-NV

DECIDED: JANUARY 9, 2019

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***DECISION: APPROVED WITH CONDITIONS***

### **BACKGROUND:**

Title 18 establishes sound levels based on the zones of both the source and receivers of noise. Events that produce noise above permitted levels may be considered for variance from the code. The Noise Review Board is charged by code to review and act upon some of these applications. The review must consider the physical characteristics; times & duration of the emitted sound; the geography, zone and population density of the affected area; whether the public health, safety or welfare is impacted; whether the sound source predates the receiver(s); and whether compliance with the standard would produce hardship without equal or greater benefit to the public. The code does not preclude review of other factors, nor does it specify the weight to be given to each criterion.

### **REQUEST:**

Robert DeVassie, representing the Oregon Department of Transportation, requested a variance for installation of variable speed signs on I-5, between Marine Drive and the Fremont Bridge. The project will be between the dates of May 1, 2019, and October 31, 2020, and the total amount requested is up to 50 nights of construction work at various locations along the route. Varianced hours shall be 6:00 pm – 7:00 am

### **FINDINGS:**

- A. The public's health, welfare and safety are not affected by the anticipated noise levels, except possible temporary interference with sleep at later hours and for closer-in properties.
- B. The sound source does not predate receivers.
- C. The last criterion in reviewing Noise Variances speaks to a sort of "balancing test", in which compliance/non-compliance is measured against the "public good." Will the denying of this

application produce hardship without equal or greater benefit to the public? Although “benefit” usually refers to economic gain, the Board also includes the pleasure obtained from the viewing of an event, the fostering of interest in an activity, or the pride in one’s city, which occurs via national exposure. In the present case the event is not only a well recognized community event, per se, but it also contributes to the national exposure of the City of Portland. The Noise Review Board finds that denying this event will not benefit the public good.

**DECISION:**

**Motion was made by Kerrie Standlee to grant a variance for Oregon Department of Education with the conditions below. Destiny Wright seconded the motion. The motion passed unanimously, 5 - 0**

**The Variance is approved with the following conditions:**

- A. Number of nights and decibel level at each location are as follows:
  - a. Site A – 9 nights 2 at 54 dBA, 7 at 66 dBA
  - b. Site B – 6 nights, 62 dBA
  - c. Site C – 6 nights, 55 dBA
  - d. Site D – 6 nights, 66 dBA
  - e. Site E – 7 nights, 72 dBA
  - f. Site F - 6 nights, 66 dBA
  - g. Site G – 6 nights, 60 dBA
  - h. Site H – 2 nights, 54 dBA
- B. Conditions may be reviewed if complaints are received.
- C. No work on Sundays or holidays without the approval of an engineer
- D. Equipment shall be used with sound control devices no less effective than those provided on the original equipment. Equipment with unmuffled exhausts is prohibited
- E. Equipment used shall comply with pertinent equipment noise standards of the EPA
- F. Stationary equipment shall be located as far from nearby noise sensitive properties as feasible
- G. Idling equipment shall be shut off
- H. Nearby residents shall be notified about any extremely noisy work within five days of work.
- I. The applicant will notify the Noise Control Office of any complaints received and how they were resolved within one week, sent to [noise@portlandoregon.gov](mailto:noise@portlandoregon.gov).
- J. The notification given to neighborhood residents shall include a contact person for construction issues. Notices shall include the nature of the work, anticipated work noise, and noise sources.

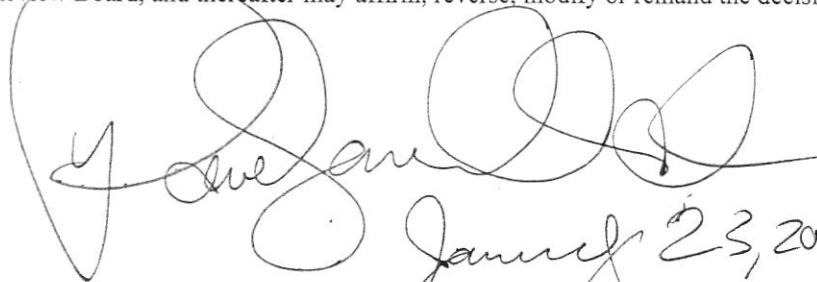
- K. A mitigation plan will be formulated with the Noise Office. The Noise Control Officer will review complaints and modify if needed.
- L. The applicant shall establish a 24-hour hotline to be available to record and respond to resident complaints during night time construction hours.

**The applicant understands that this variance is subject to review upon complaint.**

**This decision becomes effective on January 9, 2019**

APPEAL PROCEDURES: PCC Section 18.14.020 (i) states that "A variance decision of the Noise Control Officer or the Noise Review Board may be appealed to the City Council as follows: (1) A variance decision may be appealed by the applicant, his legal representative, or by any person who has submitted oral or written testimony on the application. (2) Notice of intent to appeal shall be submitted in writing to the City Auditor's Office within 10 day of the effective date of the decision. The notice shall identify the decision that is being appealed, and shall include the appellant's name, address and signature, phone number, relationship to the variance decision action, and a clear statement of the specific reason(s) for the appeal including alleged misapplication of City Codes. (3) Upon receipt of such appeal, the Auditor shall then place the matter upon the Calendar of the City Council. At the time of hearing, the City Council may consider such new matters as it deems appropriate, as well as the record developed before the Noise Control Officer or the Noise Review Board, and thereafter may affirm, reverse, modify or remand the decision".

Paul van Orden,  
for the Noise Review Board,  
City of Portland



January 23, 2019