



FINDINGS AND DECISION OF THE NOISE REVIEW BOARD

APPLICANT: OREGON DEPARTMENT OF TRANSPORTATION *MATT FREITAG*

VARIANCE NUMBER: 17-140048-000-00-NV

DECIDED: APRIL 12, 2017

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:

A variance was requested by Matt Freitag, representing Oregon Department of Transportation. The requested variance is to allow for nighttime construction for the Interstate Signs Replacement Project. The project will take between 14 to 16 months to complete. Because some activities will be concurrent and others will not occur during the night, the project is expected to require approximately 145 nights over the worst-case 16 months when nighttime work will occur.

The requested variance is for up to 145 nights between the dates Friday, September 1, 2017 and July 30, 2018, with requested hours between 6:00 pm to 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 Ryan Hyke to grant a variance for Oregon Department of Transportation with the conditions below, with the caveat that conditions 1 and 2 be added to the standard ODOT conditions listed below. Kerrie Standlee seconded the motion. The motion passed 3 - 0. Former Chair Carol Gossett resigned before this meeting, and the position had not yet been filled and member Jamie Hurd was absent.

The Variance is approved with the following conditions:

- 1. Site #36 be monitored for the two nights that work will occur**
- 2. If any site that is scheduled for work for multiple nights garners any complaints, the Applicant shall work with the Noise Control Officer to help mitigate the noise further**

Standard ODOT conditions are as follows:

ODOT has established a set of standard construction-related noise mitigation measures that are typically included in all contract specifications. (Oregon Standard Specification for Construction, *Specification 00290.32 Noise Control*, ODOT 2015. All construction activities must comply with Oregon Revised Statute, Chapter 467 (ORS 467), and the Administrative Rules Chapter 340, Division 35 Department of Environmental Quality. (OAR 340-035), in addition to any other noise control ordinance or regulation. In addition, the following construction noise mitigation measures from the Oregon Standard Specification are required to be included in all ODOT contract specifications:

- A. No construction will be performed within 1,000 feet of an occupied dwelling on Sundays, legal holidays, or between the hours of 10:00 p.m. and 6:00a.m. on other days without the approval of the ODOT construction project manager.
- B. Equipment will use sound control devices no less effective than those provided on the original equipment. Equipment with un-muffled exhausts is prohibited.
- C. Equipment will comply with pertinent equipment noise standards of the EPA.
- D. Do not drive pilings or perform blasting operations within 3000 feet of an occupied building on Sundays, legal holidays, or between the hours of 6:00 pm and 8:00 am