



## **FINDINGS AND DECISION OF THE NOISE CONTROL OFFICER**

APPLICANT: OUR LADY OF LAVANG CHURCH \*SISTER MARY JOSEPHINE DOAN\*

REQUEST: SEVEN DATES OF OUTDOOR MASSES, CULTURAL EVENTS, AND AN ANNUAL FREEDOM CELEBRATION BETWEEN MAY 27<sup>TH</sup> AND OCTOBER 1, 2017

VARIANCE NUMBER: 17-134944-001-NV

DECIDED: MAY 26, 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.

### **APPLICANT'S REQUEST:**

Sister Mary Josephine Doan, representing Our Lady of La Vang Church, is requesting a noise variance to cover the use of outdoor amplification seven outdoor events at the church in the 2017 summer season. Our Lady of La Vang is requesting the following dates and time for use of amplification: May 27 2017 from 4 PM to 6 PM; June 11, 2017 from 8:30 AM to 11 AM; June 30, 2017 from 6 PM to 9 PM; July 1, 2017 4PM to 11 PM Freedom celebration; August 13, 2017 8:30 Am to 2 PM; September 10, 2017 8:30 AM to 11 AM; and October 1, 2017 2 PM to 7:30 PM

### **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. This event is not generally reported to be a bass intensive event for its use of amplifications
- D. The church has been holding events at this location for many years. In recent years neighbors have raised concerns about the volume and frequency of amplified events. In the last year the Noise Office observed a few events at the location and offered guidance for controlling the sound to Jacques Nguyen. He is a layperson who coordinates their use of the sound system for events. At more modest, shorter time frame events and for marching events around the church area, excessive sound was not produced during observations from the City.

This corresponds with the majority of concerns from the community, in which we understand the primary impacts to be for longer time frame events and the events running later into the night. The longest requested day in this application being the Freedom celebration that is tied in with the US July 4<sup>th</sup> annual holiday. This year they are holding that Freedom celebration on July 1, 2017.

A concerned community member has stated that it would be helpful to end their July 4<sup>th</sup> holiday related event earlier than the requested 11 PM end time., so kids can get to sleep. While the Noise Office will expect the dates surrounding and including July 4<sup>th</sup> to be vibrant nights with loud fireworks keeping many community members awake, we are respectfully making a hour change to the application this year and ending one hour earlier on July 1, 2017.

- E. 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.
- F. This application was initially issued on April 11, 2017. The Noise Control Officer learned at 7 AM on Friday April 21<sup>st</sup> that the notification that was to go out before the permit was finalized did not actually go out in the prescribed manner. The Noise Control Officer revoked the initial permit determination to await the completion of required community notification to neighbors for this multi-date request. The public record was left open to May 8<sup>th</sup> 2017 for additional public comment. The LA Vang church completed notification by hand to all of the residences with in the radius of notification required by the Noise Office.
- G. There has been a great deal of misinformation that has come back to the Noise Office in regards to the review criteria, misinformation on required public notification, and comparisons of this application to Land Use decisions or land use based orders or decisions from a Code Hearings Officer. The Noise Office will be sending a letter out this year to the surrounding community members within 750 feet of the location with a copy of Our Lady of LA Vang Church’s permit. The letter will include: easy contact phone numbers to our office and a clarification on why this is not the same type of decision as a land use decision that may permanently alter the land use and development patterns for surrounding neighbors. A noise variance of this nature is temporal and has checks and balances not included in many land use decisions. \

H. The Noise Office will also be offering two specific dates in the permit for which the community can meet with the Noise Office to tell us how the summer events have been managed and have a dialog with the applicant.

### **DECISION:**

**The Noise Control Officer has approved the request with modifications to the end time on one event date and with conditions noted below.**

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

- 1) The variance shall run for the summer season 2017 on these dates and times. Our Lady of La Vang is allowed the use of amplification with all the remaining conditions on : May 27 2017 from 4 PM to 6 PM; June 11, 2017 from 8:30 AM to 11 AM; June 30, 2017 from 6 PM to 9 PM; July 1, 2017 **4PM to 10 PM Freedom celebration**; August 13, 2017 8:30 Am to 2 PM; September 10, 2017 8:30 AM to 11 AM; and October 1, 2017 2 PM to 7:30 PM.
- 2) The two rosary parades are subdued affairs and not a significant noise impact on the community from observations of the Noise Officer. For the Rosary parades on May 27<sup>th</sup> 2017 and on June 30<sup>th</sup> 2017, no decibel level monitoring will be required. Sound levels for both of the dates will not be audible further than a block and half, or 350 feet from the sound source.
- 3) After the first event on May 27<sup>th</sup>, the applicant will sit back down with the Noise Officer or the Noise Inspector and get a refresher on monitoring the events for sound issues. The refresher training will offer direction on how to use one of the basic citizen loaner noise meters we can loan the church before each event.
- 4) For all the remaining events after the May 27<sup>th</sup> event, the permitted sound level across the street at the NW corner of NE 55<sup>th</sup> Ave and at the NW corner of Alameda St and NE 56<sup>th</sup> Ave shall not exceed 65 decibels , dBA FAST MAXIMUM, with occasional peaks up to 68 dBA MAX FAST.
- 5) A hotline phone line at 503-249-5893 to call in with concerns will be available for the hours of events to the neighbors. The phone line will be answered by a live person during events.
- 6) Sound levels will be monitored on a least an hourly basis at the two prescribed monitoring locations in the permit conditions. Sound levels will also be monitored in response to complaints received from the community. These sound readings will be taken at the source of the complaints where possible. This means the church will work do a spot sound level decibel check at a neighbor's home. If it is not possible to get quickly to a neighbor's home, the applicant will record the sound level at the two noted measurement points listed above in condition 4.
- 7) Our Lady of La Vang will maintain a log of complaints received and the actions taken to mitigate the community concerns. The log will include the sound level measurements taken in response to complaints. The complete log will be forwarded to the Noise Control Officer within one week after each event.

- 8) The results of the routine noise monitoring for each event will also be forwarded to the Noise Control Officer within one week after each event.
- 9) There will be two evening community meetings organized under this permit at the Office Neighborhood Involvements location at 4747 E Burnside. The applicant and the Noise Office will be on hand to listen to community input on how the noise variance is going and if there are any noise challenges to share further details with the City and the applicant.
  - a) The first community dialog on the permit will be on Thursday July 6<sup>th</sup> at 6 :30 PM to 7:30 PM, at 4747 E Burnside, the Office of Neighborhood Involvement
  - b) The second community dialog on the permit will be on Thursday October 12<sup>th</sup> at 6 :30 PM to 7:30 PM, at 4747 E Burnside, the Office of Neighborhood Involvement

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

**This decision becomes effective on Friday May 26, 2017**

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,  
Noise Control Officer  
City of Portland

Signed on May 26, 2017

