

LU 23-111784 CU AD – In the matter of an appeal by Music Portland against the Hearings Officer’s decision to approve with conditions a Conditional Use and Adjustment Review for a new concert venue in the Central Eastside

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Applicant: Johnathan Malsin
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Owner: PDC dba Prosper Portland
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Appellant’s Representative: Carrie Richter
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Appellant: Music Portland
2332 NE Wasco St
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Site Address: West side of SE Water Ave. between SE Salmon St. and SE Main St.

Legal Description: LOT 1 TL 3602, PARTITION PLAT 2016-7; LOT 1 TL 4305, PARTITION PLAT 2016-8; LOT 1 TL 1705, PARTITION PLAT 2016-9

Zoning: **IG1** – General Industrial 1

Case Type: CU AD – Conditional Use Review and Adjustment Review

Procedure: **Type III**

Proposal

The applicant proposes to construct a new, 62,000-square-foot building on this site to be used as a concert venue with 1,280 seats and a maximum spectator capacity of 3,500. The applicant requests Conditional Use Review approval for a new Major Event Entertainment use in the IG1 zone. Type III Conditional Use Review is required by Zoning Code Sections 33.140.100.C and 33.815.040.A.1.

The applicant also requests approval of two Adjustments to Zoning Code requirements for this project:

- To reduce the minimum number of on-site, Standard A truck loading spaces from 2 to zero (Zoning Code Section 33.266.310.C.2.c). The applicant proposes to create 2 truck loading spaces which are primarily in the public right-of-way adjacent to the site. However, loading areas in the public right-of-way do not count toward the Zoning Code requirement.
- To reduce the amount of ecoroof area required from 14,617 square feet (total roof area minus allowable exemptions for roof slope greater than 25%, mechanical equipment, and the elevator overrun) to 4,670 square feet (Zoning Code Section 33.510.243.B.1).

Note: The applicant originally requested three Adjustments, including an Adjustment request to Zoning Code Section 33.266.200.B.1 to reduce the minimum number of on-site, short-term bike parking spaces from 32 to zero. The applicant had proposed to construct bike parking in the public right-of-way adjacent to the site as justification for this Adjustment. After discussion with the Portland Bureau of Transportation (PBOT), the applicant decided to withdraw this Adjustment request (Exhibit G-3). The applicant will pay into PBOT's bike parking fund when the building permit is issued, as required by Zoning Code Section 33.266.210.E.1.b when there is insufficient space on-site to provide the required short-term bike parking. PBOT would then construct and maintain bike parking in the public right-of-way.

Relevant Approval Criteria

To be approved, this proposal must comply with the approval criteria of Title 33, the Portland Zoning Code. The applicable approval criteria are:

- Zoning Code Section 33.815.215.A-D (Conditional Use Review); and
- Zoning Code Section 33.805.040.A-F (Adjustment Review)

Procedural History

The application for this land use review was submitted on December 22, 2023, and was determined to be complete on May 23, 2024. The Staff Report and Recommendation to the Hearings Officer was issued prior to the hearing before the Hearings Officer. The hearing before the Hearings Officer was held on July 10, 2024. The Hearings Officer held the record open until July 17, 2024, for new evidence, July 24, 2024 for rebuttal evidence, and July 31, 2024 for final legal argument. The record of the hearing was therefore held open consistent with the requirements of ORS 197.797(6). On August 14, 2024, the Hearings Officer, having reviewed and considered all the evidence and argument in the record, issued a decision approving the application with conditions. Music Portland subsequently filed a timely appeal of the Hearings Officer's decision to the City Council on August 27, 2024. The City Council held an on the record hearing on the appeal on September 19, 2024, and unanimously voted to tentatively deny the appeal and uphold the Hearings Officer's Decision with conditions of approval. At the close of the City Council hearing on September 19, 2024, the City Council set a date for adoption of findings and a final vote. At the final proceeding on **October 2, 2024**, the City Council adopted the findings contained in this Decision and the Hearings Officer's final conditions of approval.

Because the appeal to the City Council was an on-the-record proceeding, evidentiary submittals were limited to the evidence that was in the record on the date the Hearings Officer closed the public record; in this case that date is July 31, 2024. No new evidence was permitted during the City Council proceedings. The City Attorney and City Planner monitored the evidence submitted into the record after July 31, 2024, and during the City Council proceedings advised the City Council on a list of submittals that they believed were not previously submitted into the record before the Hearings Officer. The following is a list of new evidence that was submitted to the City Council at the September 19, 2024 appeal hearing:

- The decision adopted by Prosper Portland at their September 18, 2024, meeting, and any information and discussions arising from the Prosper Portland hearing
- Discussions of prior attempts to build mid-size concert venues in the city (though discussion of a current proposal for another mid-size venue was in the record).
- Comments related to impacts from a recent Live Nation-sponsored event at Providence Park
- Information related to pending federal litigation and enforcement against Live Nation that were beyond the close of the record
- Comments regarding allegations of bullying by the applicant's team and use of the word "firebombing" by opponents
- Comments related to experiences at Live Nation concerts in Bend, Oregon, and in Austin, Texas

No party objected to the exclusion of this new evidence and the City Council rejected this evidence from consideration. To the extent any of the many submittals after July 31, 2024, contain new evidence, such evidence is rejected and not included in the record and is not relied on by the City Council this decision.

Decision

Based on evidence in the record and adoption of the Council's Findings and Decision in Case File LU 23-111784 CU AD and by this reference made a part of this Order, it is the decision of the City Council to approve a Conditional Use Review to establish a Major Event Entertainment use on this site; and to approve two Adjustments:

- To reduce the minimum number of on-site, Standard A truck loading spaces from 2 to zero (Zoning Code Section 33.266.310.C.2.c).
- To reduce the amount of ecoroof area required from 14,617 square feet (total roof area minus allowable exemptions for roof slope greater than 25%, mechanical equipment, and the elevator overrun) to 4,670 square feet (Zoning Code Section 33.510.243.B.1).

The approvals are per the approved plans, Exhibit C-1 through C-4, and subject to the following conditions of approval:

- A. As part of the building permit application submittal, each of the required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C-1 through C-4. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 23-111784 CU AD."
- B. Prior to issuance of a building permit for this development, the applicant must receive 30 percent public works concept approval and make any required bond payment for required frontage improvements abutting the site.
- C. Prior to issuance of a building permit for this development, the applicant must obtain approval of the appropriate permit as determined by PBOT for the proposed truck loading in SE Main Street. The applicant must adhere to all the conditions and stipulations of said permit for the life of the proposed use. If any conditions are found to be in violation, the applicant may be fined and/or applicable permits may be revoked.
- D. The applicant must continually implement the transportation demand management (TDM) measures identified in the TDM plan in Exhibit A-10 that are within their control.
- E. The applicant must assess the bike parking capacity on an annual basis for the first 3 years after the concert venue begins operation and then every other year after that ending with year 11. That assessment must include bike count averages for events throughout the year. The applicant must send their assessment to PBOT Development Review and PBOT Active Transportation and Safety. If demand consistently exceeds the provided bike parking, the applicant must work with PBOT on remedies, including but not limited to adding additional bike racks or a contract for offering temporary bike racks during events.

About this Decision. This land use decision is not a permit for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

IT IS SO ORDERED:

October 7, 2024

Date

Rene Gonzalez Digitally signed by Rene Gonzalez
Date: 2024.10.07 13:09:37 -07'00'

Rene Gonzalez
Presiding Officer and President of the Council at Hearing
October 2, 2024, 9:30 a.m.



October 8, 2024

Johnathan Malsin
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Portland, OR 97209

LU 23-111784 CU AD – In the matter of an appeal by Music Portland against the Hearings Officer’s decision to approve with conditions a Conditional Use and Adjustment Review for a new concert venue in the Central Eastside

Enclosed is a copy of the Order of Council on LU 23-111784 CU AD. If you wish to obtain a copy of the City Council’s findings and decision, contact the Council Clerk by email at councilclerk@portlandoregon.gov or at (503) 823-4082.

The Order of Council must be recorded with the Multnomah County Recorder within 10 days of receipt of this letter. Follow the instructions below to ensure compliance. The City Auditor’s Office will submit the Order of Council to the County for recording.

1. Prepare a check for \$101.00 made payable to the Multnomah County Recorder, indicating the land use case file number on your check.
2. MAIL CHECK TO: City of Portland, Office of the City Auditor – Council Clerk, 1221 SW 4th Ave, Room 130, Portland, OR 97204-1900

City Council's decision is the final review process available through the City. You may appeal this decision to the Oregon Land Use Board of Appeals (LUBA) by filing a Notice of Intent to Appeal with LUBA within 21 days of the date of decision, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have appeared orally or in writing during the City’s proceedings on this land review. Until October 31, 2024, LUBA’s address is 775 Summer Street NE, Suite 330, Salem, Oregon 97301-1283. Effective November 1,

1221 SW 4th Avenue, Room 130, Portland, OR 97204

(503) 823-4082

Page 1 of 2



2024, LUBA's address is 201 High Street, SE, Suite 600, Salem, Oregon 97301-3398. Until December 31, 2024, LUBA will accept as correctly addressed pleadings addressed to either location. You may call LUBA at 1-503-373-1265, email at LUBA.Support@luba.oregon.gov, or visit the website (www.oregon.gov/LUBA) for further information on filing an appeal.

Yours sincerely,
Simone Rede
Auditor of the City of Portland
By: *Keelan McClymont*
Keelan McClymont, Council Clerk

Encl.
Cc: Suzannah Stanley, Mackenzie
Paul Gagliardi, PDC dba Prosper Portland





NOTICE OF FINAL DECISION

TO: All Interested Persons
DATE: October 8, 2024

LU 23-111784 CU AD – In the matter of an appeal by Music Portland against the Hearings Officer’s decision to approve with conditions a Conditional Use and Adjustment Review for a new concert venue in the Central Eastside

To Whom It May Concern:

Enclosed is a copy of the Order of Council on LU 23-111784 CU AD, denying the appeal, upholding the decision of the Hearings Officer and adopting the findings. If you wish to obtain a copy of the City Council’s findings and decision, please contact the Council Clerk by email at councilclerk@portlandoregon.gov or at (503) 823-4082.

City Council's decision is the final review process available through the City. You may appeal this decision to the Oregon Land Use Board of Appeals (LUBA) by filing a Notice of Intent to Appeal with LUBA within 21 days of the date of decision, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have appeared orally or in writing during the City’s proceedings on this land review. Until October 31, 2024, LUBA’s address is 775 Summer Street NE, Suite 330, Salem, Oregon 97301-1283. Effective November 1, 2024, LUBA’s address is 201 High Street, SE, Suite 600, Salem, Oregon 97301-3398. Until December 31, 2024, LUBA will accept as correctly addressed pleadings addressed to either location. You may call LUBA at 1-503-373-1265, email at LUBA.Support@luba.oregon.gov, or visit the website (www.oregon.gov/LUBA) for further information on filing an appeal.

Yours sincerely,
Simone Rede
Auditor of the City of Portland
By: *Keelan McClymont*
Keelan McClymont, Council Clerk

Encl.



LU 23-111784 CU AD
Order of council mailed: 10/8/24

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