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# 832-2024

Report

## Consider 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 (LU 23-111784 CU AD)

Findings Adopted

The purpose of this memorandum is to provide a brief description of the land use review decision that was appealed and which will be presented to you in a public hearing on September 19, 2024 at 2:00 pm.

**Site Location:** west side of SE Water Ave. between SE Salmon St. and SE Main St.

**PP&D Representative:** Andy Gulizia, City Planner

- 1. Land Use Review Requested:** Type III Conditional Use Review and Adjustment Review for a new concert venue in the Central Eastside.
- 2. 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).

### Introduced by

[Mayor Ted Wheeler](#)

### City department

[Permitting & Development](#)

### Contact

**Andrew Gulizia**

Planner II. City-Land Use

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### Requested Agenda Type

Time Certain

### Date and Time Information

<b>Requested Council Date</b>
October 2, 2024
<b>Requested Start Time</b>
9:45 am
<b>Time Requested</b>
15 minutes

3. **Hearings Officer Decision:** The Hearings Officer found that with the conditions of approval listed in the decision, the applicable approval criteria for the Conditional Use Review and Adjustment Review were met.
4. **Appeal:** Music Portland filed an appeal of the Hearings Officer's decision to the City Council before the August 28, 2024 appeal deadline. The City Council hearing date was scheduled so the City can comply with the state-mandated October 4, 2024 deadline for a final local decision on this application. The appellant states the Hearings Officer's decision erred for reasons that include not adequately responding to transportation issues such as truck movements in the street and conflicts with train crossings, not adequately protecting the industrial character of the area, not adequately considering the benefits intended to be provided by full ecoroof coverage, and not considering negative impacts from the business practices of the intended operator of the concert venue (Live Nation).
5. **Alternatives Facing Council:**
  - Deny the appeal and uphold the Hearings Officer's findings and conditions of approval.
  - Deny the appeal and uphold the Hearings Officer's decision, but with modified findings or conditions.
  - Grant the appeal and overturn the Hearings Officer's approval of the Conditional Use Review and Adjustment Review.

## Exhibits and Attachments

 [Council Findings and Conclusions - LU 23-111784 CU AD](#) 339.92 KB

 [Notice of Public Hearing \(LU 23-111784 CU AD\)](#) 6.04 MB

 [Commissioners' Assistants Briefing \(CAB\) Memo](#) 223.09 KB

## Impact Statement

### Purpose of Proposed Legislation and Background Information

The Hearings Officer's approval of the proposed development is likely to be appealed by Music Portland (a trade organization). Zoning Code Section 33.730.030.G provides that Type III land use review decisions may be appealed to City Council. A Type III land use review appeal is a quasi-judicial action.

### Financial and Budgetary Impacts

This is an appeal of a Type III quasi-judicial land use review, not legislation. The City Council decision on this matter will not have financial or budgetary impacts on the City.

Land use reviews and appeals are fee supported. City costs associated with this appeal are for staff time to process the appeal.

## Community Impacts and Community Involvement

The notification procedures for this Type III land use review followed the public notice requirements contained within the Portland Zoning Code, as adopted by the City Council.

For Type III land use reviews, the Zoning Code requires public notice of the initial public hearing to be mailed to recognized neighborhood and business associations that are within 1,000 feet of the subject site and to neighbors within 400 feet of the site. In addition, signs notifying the public of the initial hearing were posted at the subject site. City Bureaus were also sent notice. Interested persons were encouraged to write and/or testify at the public hearing conducted before the Hearings Officer.

Numerous public comments were submitted to the Hearings Officer as both oral and written testimony. The public hearing before the Hearings Officer took place on July 10, 2024. On August 14, 2024, the Hearings Officer issued a written decision on the proposal (approval with conditions).

The City Council decision on the appeal will be the final decision of the City, per Zoning Code Section 33.730.030.I.9. However, the City Council's decision may be appealed to the Oregon Land Use Board of Appeals (LUBA).

## Financial and Budget Analysis

No Fiscal Impact.

## Document History

Item 812 Time Certain in [September 18-19, 2024 Council Agenda](https://www.portland.gov/council/agenda/2024/9/18) (<https://www.portland.gov/council/agenda/2024/9/18>)

City Council

Tentatively deny appeal and uphold decision of Hearings Officer

Oral and written record are closed.

Motion to tentatively deny appeal, uphold the decision of the Hearings Officer, and ask the applicant and staff to return with findings: Moved by Wheeler and seconded by Ryan. (Y-5)

Prepare Findings for October 2, 2024 at 9:45 a.m. time certain

Aye (5):

Ted Wheeler, Carmen Rubio, Dan Ryan, Rene Gonzalez, Mingus Mapps

**Item 832 Time Certain in [October 2, 2024 Council Agenda](https://www.portland.gov/council/agenda/2024/10/2)  
(<https://www.portland.gov/council/agenda/2024/10/2>)**

City Council

Findings Adopted

Motion to deny appeal, uphold the decision of the Hearings Officer and adopt the findings: Moved by Gonzalez and seconded by Ryan.

Aye (4): Mingus Mapps, Carmen Rubio, Dan Ryan, Rene Gonzalez

Absent (1): Ted Wheeler