

CITY COUNCIL
COMMUNITY PLANNING AND TRANSPORTATION
COMMITTEE MINUTES

December 1, 2016

The City Council Community Planning and Transportation Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 4:34 p.m. in the Conference Room on the 1st day of December, 2016, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray and the Norman Public Library at 225 North Webster 48 hours prior to the beginning of the meeting.

PRESENT:	Councilmember Allison, Hickman, Karjala, and Chairman Holman
ABSENT:	Councilmember Clark
STAFF PRESENT:	Mayor Lynne Miller Mr. Jeff Bryant, City Attorney Ms. Susan Connors, Director of Planning and Community Development Mr. James Fletcher, Police Department Ms. Brenda Hall, City Clerk Ms. Jane Hudson, Principal Planner Mr. Keith Humphrey, Police Chief Ms. Sara Kaplan, Retail Marketing Coordinator Captain Eric Lehenbauer, Police Department Lieutenant Jeff Robertson, Police Department Ms. Karla Chapman, Administrative Technician III

Item 1, being:

CLEVELAND AREA RAPID TRANSIT (CART) RIDERSHIP REPORT INCLUDING SAFERIDE AND EXTENDED SERVICE FOR THE MONTHS OF OCTOBER, 2016 AND OTHER CART ACTIVITIES.

Ms. Karleen Smith, Marketing Specialist for Cleveland Area Rapid Transit (CART), highlighted CART Ridership Reports for October 2016, and said ridership has decreased 1% from October 2015, stating October 2016, had one less regular day of service which mostly explains the decrease. She said the fiscal year to date ridership (July to October) has an increase of 6% over the same period last year. Ms. Smith said for the one-week manual count in October, there were 282 riders who traveled with bicycles (0.8%) and 127 with wheelchairs (0.4%). She said Route 11-Lindsey East carried the most passengers with bicycles (98) and Route 10-Main Street carried the most with wheelchairs (47).

Ms. Smith said Councilmember Clark and Mayor Miller joined Doug Meyer, CART Director, on Route 21-Alameda/East on Saturday morning, October 22nd, for the Read and Ride. She said both Councilmember Clark and Mayor Miller read all about buses to children and CART provided sunglasses to everyone. CART is hoping to make this an annual event with City officials and/or the library system.

Item 1, continued:

Ms. Smith said the Van Advisory Committee has changed to become the new CART Transit Advisory Committee and the new committee met on October 19th and November 12th. She said the new committee will help keep the Norman community informed of CART fixed routes and CARTaccess services and allow them to learn from the community about accessible transportation needs of those living and working in Norman.

Ms. Smith said CART met with University of Oklahoma (OU) students from the Undergraduate Congress on October 28th to discuss some of their ideas for CART service. Those students are working to develop a survey to go out to the entire OU population to get feedback on CART.

Ms. Smith highlighted the GotchaBike program and said OU has a contract with the company which will provide the bike share program. She said GotchaBike will deliver 75 bikes, maintain the bikes, and manage the program that will begin in early February, 2017. Ms. Smith said GotchaBike is working out the details of the program with OU and the student government association to determine where the bikes will be placed, etc.

CART Staff delivered boxes to over 50 OU departments for its annual Fill the Trolley event and departments will begin collecting toys that CART will pick up in a trolley on December 6th and 7th. CART donates the toys to the Cleveland County Christmas Store.

Ms. Smith said requests for CART services include north central and northeast Norman, north of Rock Creek Road between 12th Avenue NW and 24th Avenue NE and southeast Norman, south of Highway 9 to Cedar Lane between 12th Avenue NE and 24th Avenue NE.

CART was approved to begin placing bus stop signs at all CART stops that do not currently have a sign and CART Staff will coordinate with City Staff to ensure signs are placed properly.

Chairman Holman said he is concerned about the temporary bus stop at 24th Avenue SW at Lindsey Street because when the bus is on West Lindsey Street and turns onto 24th Avenue SW, it immediately stops and drivers behind it try to go around, which is dangerous. Ms. Smith said this is a temporary location due to the construction on Lindsey Street, but CART will review that location. Chairman Holman suggested moving the stop further north and Councilmember Allison said that bus stop may be serving Lindsey Street and moving it further north on 24th Avenue SW could make people have to walk further so we want to make sure we are not impacting riders.

Ms. Smith said CART is forming a Special Transportation Advisory Committee to address issues for fixed route and CARTaccess. This will give CART a chance to work with different organizations in Norman that interface with people with disabilities and receive feedback on improving the bus system overall.

Items submitted for the record

1. Cleveland Area Rapid Transit Ridership Totals for the Month of October 2016
2. Cleveland Area Rapid Transit Monthly Report for October 2016, with Attachment 1, CART Photo of the CART Read and Ride Event held on October 22, 2016

* * * * *

Item 2, being:

DISCUSSION REGARDING THE DEFINITION OF LIVE ENTERTAINMENT IN THE ZONING ORDINANCE.

Ms. Susan Connors, Director of Planning and Community Development, said on September 27, 2016, Council postponed an application for a Special Use for “Outdoor Live Entertainment Venue” from Puebla Restaurant on Main Street. Council requested the application be discussed by the Community Planning and Transportation Committee (CPTC) since the City has never had a request for this type of Special Use and Council wanted more information on the issue. The application was submitted to allow outdoor live entertainment on their patio located in Downtown Norman adjacent to an alley. She said previous applications for live entertainment venues have not designated indoor versus outdoor; therefore, Staff has always processed the applications for indoor use. Council directed Staff to investigate the impacts of outdoor entertainment in the downtown area along Main Street as well as the possibility of changing existing ordinances.

Ms. Connors said in recent years, outdoor live music venues have become more prevalent at small venues, such as restaurants with outdoor patios, and street cafés. These music venues can consist of amplified or non-amplified music and acapella or instrumental music with a music decibel higher than allowed by the noise ordinance with noise extending beyond property boundaries. She said the music venues can be a nuisance to adjacent properties whether those properties are commercial or residential and many municipalities have struggled with how to regulate music venues and minimize impact on adjacent properties.

Ms. Connors said the CPTC met on October 27th, and Staff presented research on various processes cities maintain for controlling or permitting outdoor live entertainment venues. She said at that meeting, the Committee discussed the information presented and continued the discussion to the December 1st CPTC meeting, requesting Staff continue the analysis of Noise Variance Permits and Outdoor Live Entertainment as a Special Use.

How is a Noise Variance Permit processed, tracked and implemented?

Ms. Connors said the Norman Police Department (NPD) requires all applications for noise variances to be submitted two (2) weeks prior to the scheduled event. No more than seven (7) permits will be approved at the same location or premises per calendar year; however, City Parks are exempt due to the variety of events held by different groups or sponsors. No noise variance shall be permitted earlier than 7:00 a.m. or later than 11:00 p.m., Sunday through Thursday and 12:00 a.m. on Friday and Saturday. If NPD receives two (2) applications within 500 feet of one another with events scheduled on the same date and time, a permit will not be issued for the event that submits the later application. If two (2) applications are submitted simultaneously, NPD will approve the most compliant application with the noise variance regulations.

Outdoor music venues may or may not impact residential areas – is there notice given to the neighbors?

Ms. Connors said currently there is not a policy in place to notify adjacent property owners of a Noise Variance Permit approved by NPD. She said there are several variables that need to be considered if notification requirements are established, such as the notice radius, responsible party for cost of notice, certified ownership list or obligate property owner to notify with proof of notice and the additional time to notify on top of the two week application period.

Item 2 continued:

What supersedes – Special Use for Outdoor Live Entertainment, Noise Variance Permit, or Special Event Permit?

Ms. Connors said, as discussed at the October 27th CPTC meeting, all Special Use Permits for Live Entertainment issued to date have been for indoor use. The Zoning Code is silent on outdoor versus indoor live entertainment; therefore, Council is the body which will determine allowing the use outdoors. She said all events which have had live entertainment outdoors up to this point have been controlled by obtaining Noise Variance Permits or Special Event Permits.

Special Event Permit is defined “...an outdoor meeting, festival, gathering, amusement, show, concert, or other activity that is expected to last two (2) or more hours, is open to the public, and is reasonably expected to attract 1,000 or more people...”. Ms. Connors said these regulations determine whether someone is required to apply for a Special Event Permit and in comparing the numbers for the last three years, there have been many more Noise Variance Permits issued than Special Event Permits.

Ms. Connors said a Special Use Permit, Noise Variance Permit, and a Special Event Permit should work together. First, a Noise Variance Permit is required as part of an application for a special event if the special event will violate the noise ordinance. For example, the Norman Music Festival applies for both a Special Event Permit and a Noise Variance Permit. Ms. Connors said if Council were to approve a Special Use Permit for outdoor live entertainment, the business with the Special Use Permit would also need a Noise Variance Permit if they believed the noise level will exceed the noise ordinance.

What is the possibility of establishing an “Art and Entertainment District” with an increase in the number, more than seven (7), of Noise Variance Permits annually and with the option to appeal to Council for additional permits? How would the overlay district operate?

Ms. Connors said establishing an “Art and Entertainment District” in the Downtown Area, along Main Street, is an option for helping to control/monitor indoor as well as outdoor live entertainment. She said currently if a restaurant has live entertainment inside the business they are compliant with the regulations of the Zoning Ordinance; however, if a restaurant wants to offer outdoor live entertainment to their guests, under the current regulations, they must be approved for a Special Use for Outdoor Live Entertainment by Council, and most likely also apply for a Noise Variance Permit. While the downtown area of Norman could be an ideal location for outdoor live entertainment, to allow a continuous venue for such live entertainment outdoors would be a disservice to the businesses and residents of Norman as a whole. If the Zoning Ordinance were amended to allow for outdoor live entertainment and is not limited to the downtown area, there will be more businesses requesting such special uses that will impact adjacent property owners. For example, Campus Corner is a very compact business district with residential scattered in close proximity and allowing outdoor live entertainment would create an opportunity for greater impact to the business sector and residential area in close proximity.

Ms. Connors said Staff previously reviewed Manhattan, Kansas, which has an area/overlay district designated as “Aggieville Business Improvement District” that includes restaurants, bars, theatres, retail, a hotel, and a few residential uses above some of the businesses. She said mixed within this overlay district are indoor and outdoor live entertainment uses and noise variance permits are not required.

Item 2, continued:

The City of Denton, Texas, has an area around the Town Square that has recently seen a marked increase in “beer gardens” which have both indoor and outdoor live entertainment uses. The City of Denton is struggling with how to control the nuisance the live music is creating for adjacent residential property owners and business owners and they do not have an ordinance that regulates live entertainment, i.e., if the zoning is appropriate for the bar or restaurant use the Zoning Ordinance does not regulate the live entertainment element. Denton’s issue is the live entertainment is violating the Noise Ordinance, so they are busy citing those in violation.

In the City of Oklahoma City (OKC), outdoor live entertainment is not regulated, similar to Denton. If the underlying zoning is in place to accommodate the restaurant or bar then the entertainment element is allowed as long as the noise does not violate the Noise Ordinance. OKC allows three (3) Noise Permits annually per site and most of the facilities that offer outdoor live entertainment close by 11 o’clock. Violations are complaint driven and OKC will issue tickets to those businesses in violation.

How would music downtown impact residents?

Ms. Connors said there are approximately 12 existing residential units in the downtown area; however, another site in the downtown area was recently zoned for possibly four (4) residential units. She said all of the units are located on the second floor, above existing retail areas and residents are aware they live in a commercial district that has parties and/or special events along Main Street. Ms. Connors said allowing live entertainment along Main Street does not seem too out of character for a commercially concentrated area. She felt establishing time limits for music would restrict late night events that could impact those residents in the late hours.

Do noise levels supersede the City’s ordinance when it comes to stadium noise, i.e., University of Oklahoma (OU) and high schools?

Ms. Connors said sporting/public events at Norman Public Schools and OU are exempt from the noise ordinance.

How would a zoning overlay work in downtown?

Ms. Connors said an overlay district would be the same as any ordinance currently adopted in the Zoning Ordinance. She said the area would be defined, regulations would be established for the area, and any entity wanting to operate within the overlay district would be required to adhere to the adopted regulations of both the underlying zoning and the zoning overlay district. Ms. Connors said violations within the area would be enforced in the same manner as within all other zoning districts.

How would Center City Visioning be affected by an overlay district?

Ms. Connors said Center City would not be impacted by the overlay district and the overlay district would outline music/noise/entertainment volume. She said the Center City Form Based Code is proposed as a new zoning district to control the uses within that boundary.

Should the City allow more than seven (7) noise variances per year?

Ms. Connors said Staff did not find any cities in our research that allowed more than seven (7) noise variances per year, if required. She said OKC allows three (3) annually at any one location; however, some cities do not regulate live entertainment venues and simply monitor on a complaint basis, ticketing those not in compliance with the Noise Ordinance.

Item 2, continued:

Should Council hear Special Use for Live Entertainment on a case by case basis based on impact and other issues?

Ms. Connors said the current regulations and definitions of “Live Entertainment” in the Zoning Ordinance require that Council approve a Special Use Permit for Outdoor Live Entertainment where it is an allowed Special Use in a zoning district. She said approving Special Use Permit applications for Outdoor Live Entertainment on a case-by-case basis is an option for Council and Council can make a determination of what standards will be required for the use of Outdoor Live Entertainment which could include time restrictions, decibel levels or attendance numbers.

Should outdoor live entertainment be allowed as a special use only in C-2 and C-3?

Ms. Connors said restaurants may have Indoor Live Entertainment as an allowed use in the C-1, C-2, and C-3 Districts. She said the allowance for live entertainment in conjunction with a restaurant use was established in 2002, along with renaming “Night Club or Dance Hall” as “Live Entertainment” in the definitions section of the Zoning Code. Ms. Connors said the Zoning Code amendment did not specify indoor or outdoor use; however, night clubs and dance halls are almost always indoor uses so it is reasonable to think that the name change did not envision outdoor use. Establishing Outdoor Live Entertainment in the C-2 and C-3 Districts in areas specifically reviewed and approved by Council may be an option. However, a majority of the C-2 Districts are adjacent to residential, whereas C-3 Districts are typically buffered on the edges by C-2 Districts before reaching the residential areas/districts.

Should the City raise the decibel limit on Noise Variances?

Ms. Connors highlighted the decibel level chart and said it demonstrates the level of decibels for a music venue, far exceed the limit set on the Noise Ordinance at an average of 80 dB. She said raising the maximum decibels is not necessary; the current standards should stay in place as the guide to what sound impacts are allowed for everyday use.

Should live entertainment be allowed only in Planned Unit Development (PUD)s so Council can control locations and requirements?

Ms. Connors said limiting live entertainment to areas designated as a PUD is an option; however, the areas where Staff is seeing the request for the live entertainment are in the downtown area, already zoned C-3, Intensive Commercial District. She said creating an overlay district over the C-3 zoned downtown area and/or the Campus Corner area would establish controls/regulations to help minimize impacts on adjacent property owners, both residential and commercial, without the associated issues that come with rezoning these areas (that do not currently have a parking requirement) to a PUD. Staff felt the most reasonable approach is to establish guidelines that will control uses creating the least offensive impact on the majority of the population.

Do all special events require a noise variance and if so does the permit supersede the noise ordinance?

Ms. Connors said not all events require a Special Event Permit and/or a Noise Variance. She said if an event lasts two (2) or more hours, is open to the public, and is reasonably expected to attract 1,000 or more people at any time during the event, then a Special Event Permit is required. Ms. Connors said Special Event Permits and Noise Variances are not always required together. She said there are many instances where a Noise Variance is issued but a Special Event Permit is not required, i.e., Greek events around campus, parties in the park, and other various smaller parties that will create noise but not have the attendance or be open to the public.

Item 2, continued:

How does OKC handle the Zoo Amphitheatre live entertainment events?

Ms. Connors said the Zoo Amphitheatre was established in early 1930 and operates as an exempt facility. She said the concerts typically end at 11 o'clock and there is no Special Event or Noise Variance required for the site.

Staff Recommendations

Ms. Connors said Staff has found the majority of the cities surveyed either prohibit outdoor live entertainment or do not regulate it via zoning, and instead depend on a noise ordinance to regulate the sound. She said if a City relies on a noise ordinance to regulate outdoor live entertainment then it is usually on a complaint basis. Ms. Connors said the most common method of zoning regulation to control outdoor live entertainment was the establishment of an Arts District or Overlay District with specific guidelines to control noise issues.

Ms. Connors said the Zoning Ordinances and Noise Ordinances reviewed did not outline Outdoor Live Entertainment as allowed or strictly prohibited use. If a zoning code did not specifically list outdoor live entertainment as a special use/allowed use then it was not considered an allowed use in our research. Ms. Connors said cities are more likely to enforce outdoor live entertainment noise complaints through a noise ordinance rather than through the Zoning Ordinance.

Ms. Connors said Staff suggests the decibel levels in the Noise Ordinance, Article III, Noise Control, remain with no changes at this time. Planning Staff also recommends not increasing the number of Noise Variance Permits issued on an annual basis since no cities that were researched issue more than Norman currently issues.

Ms. Connors said at the October 27, 2016, CPTC meeting, the Committee discussed establishing a clear definition between "Indoor versus Outdoor Live Entertainment Venue." She said the Committee also discussed whether to exclude the use of outdoor live entertainment venues from the Zoning Ordinance and regulate the use via Special Event Permits and Noise Variance Permits.

Ms. Connors said changes to the definitions should include clarification of indoor versus outdoor areas allowing live entertainment as well as including a definition of "outdoor music venues" as follows:

(2) ACCESSORY. **Indoor** Live Entertainment, when offered in conjunction with an otherwise unrelated legal commercial use, will be considered an accessory use when it constitutes no more than ten (10) percent of the gross monthly revenue of the establishment.

(65) LIVE ENTERTAINMENT VENUE. An establishment where a major component of the business includes live or electronically amplified music, dancing, or other entertainment, and which may impose an admission charge or cover charge to observe that entertainment, nightclubs, bars, and dance halls are typical uses within the category **and all activities are located within a fully enclosed building**. This category shall not include, in any manner, any Adult Entertainment Establishment.

Item 2, continued:

Ms. Connors said a new definition would be added as follows:

(84.5) OUTDOOR MUSIC VENUE. A commercial venue or property where sound equipment is used to amplify sound that is not fully enclosed by permanent, solid walls and a roof.

Ms. Connors said Staff also recommends the following:

- Amend the Zoning Ordinance to prohibit outdoor live entertainment venues as a Special Use and clarify definitions. Set specific guidelines for Live Entertainment – restrict to indoor only unless a Noise Variance from the Norman Police Department (NPD) has been issued to allow for the amplified live music outdoors.
- Establish an Arts and Entertainment Overlay District with regulations to address the opportunities for amplified/live music.

Councilmember Holman asked Staff whether a sidewalk live entertainment, i.e., person playing guitar or other musical instruments in front of businesses, etc., needs to obtain any permit(s) and Ms. Brenda Hall, City Clerk, said no permit is required; however, the live entertainment cannot block sidewalk traffic.

Mayor Miller said the Noise Ordinance currently controls Special Events and does not seem like this is a big issue for Norman. She felt like the only place to do an overlay district would be in the Downtown or Campus areas and Chairman Holman agreed.

The Committee discussed and agreed with Staff's recommendation to amend the Zoning Ordinance prohibiting outdoor live venues as a Special Use; clarify the definitions; set specific guidelines for Live Entertainment restricting to indoor only unless a Noise Variance is obtained from the NPD; only allow a maximum of seven (7) Noise Variances per location annually; and establish an Arts and Entertainment Overlay District with regulations to address the opportunities for amplified/live music.

Ms. Hall said Council recently postponed an application from Puebla at a Council meeting and Staff will bring forward the application again at the December 13, 2016, Council meeting for Council consideration.

Items submitted for the record

1. Memorandum dated November 23, 2016, from Susan Connors, Director of Planning and Community Development, to the Community Transportation and Planning Committee, with Exhibit A, Noise Variance Permit Log 2014; Exhibit B, Special Event Permits; Exhibit C, City of Manhattan, Kansas, Aggieville Business Improvement District Map and Pictures; Exhibit D, Noise Level Chart

* * * * *

The meeting adjourned at 5:20 p.m.

ATTEST:

City Clerk

Mayor