

**NORMAN PLANNING COMMISSION  
REGULAR SESSION MINUTES**

**AUGUST 11, 2016**

The Planning Commission of the City of Norman, Cleveland County, State of Oklahoma, met in Regular Session in the Council Chambers of the Norman Municipal Building, 201 West Gray Street, on the 11<sup>th</sup> day of August, 2016. Notice and agenda of the meeting were posted at the Norman Municipal Building and online at <http://www.normanok.gov/content/boards-commissions> at least twenty-four hours prior to the beginning of the meeting.

Chairman Andy Sherrer called the meeting to order at 6:30 p.m.

\* \* \*

Item No. 1, being:

**ROLL CALL**

MEMBERS PRESENT

Sandy Bahan  
Roberta Pailes  
Erin Williford  
Chris Lewis  
Andy Sherrer  
Dave Boeck  
Tom Knotts  
Neil Robinson

MEMBERS ABSENT

Lark Zink

A quorum was present.

STAFF MEMBERS PRESENT

Susan Connors, Director, Planning &  
Community Development  
Jane Hudson, Principal Planner  
Janay Greenlee, Planner II  
Roné Tromble, Recording Secretary  
Larry Knapp, GIS Analyst II  
Leah Messner, Asst. City Attorney  
Ken Danner, Subdivision Development  
Manager  
Drew Norlin, Asst. Development Coordinator  
David Riesland, Traffic Engineer  
Terry Floyd, Development Coordinator

\* \* \*

Item No. 4, being:

**O-1617-3 – EL CHAPO, L.L.C., DBA PUEBLA TACOS Y TEQUILERIA REQUESTS SPECIAL USE FOR LIVE ENTERTAINMENT (OUTDOORS) FOR PROPERTY ZONED C-3, INTENSIVE COMMERCIAL DISTRICT, AND LOCATED AT 305 E. MAIN STREET.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Staff Report
3. Site Plan
4. Pre-Development Summary

**PRESENTATION BY STAFF:**

1. Jane Hudson – Just a brief explanation on this. This is a restaurant that's on Main Street. It's been in business for several years. It was recently purchased and the new owners are coming forward to request special use for the live entertainment venue. As a restaurant, they can have live entertainment as long as it stays within the restaurant itself. But in this application they're actually requesting to have live entertainment on the patio area that abuts the alley, which you'll see some pictures of in just a minute.

The existing zoning in the area consists of C-3 to the north, east, south, and west. The existing land use in the area consists of commercial retail, office type businesses on Main Street. This is the actual subject tract and the alley is back here and you can see the patio area back there. This is the front of the restaurant there on Main Street looking back to the east. This is looking toward Porter. This is looking back to the north toward Gray Street. This is on the alley and, as you can see, this is the patio area. The Garage Restaurant is to the east of this business here. This is the entrance off the alley. This is the area itself. This area back here is used for seating if they don't have someone performing on those particular evenings. This is looking back to the west; I wanted you to see how close it is to the public parking lot that's off of Gray and Crawford. This is, of course, the alley looking back to the west.

We did have a protest from an adjacent business owner which has this area here. We don't actually do protest maps whenever it's not a property owner, so this is a business owner, and I believe you all received a copy emailed of the letter from the business owner.

So, as stated in the staff report, the area in downtown Norman has been viewed as the entertainment district and this proposal does fit well within that area. The request that they're asking is a minor change to what's going on down there already. Staff does support this request and recommends approval of Ordinance No. O-1617-3. I'd be happy to answer any questions you might have. The applicant's representative is here with a brief presentation for you and some photos as well.

2. Mr. Lewis – Can you back up two pictures that shows the stage? So where those blue chairs are, is that where the band actually sits and the speakers face toward the building?

3. Ms. Hudson – There's some pictures coming up. You'll see those.

4. Mr. Knotts – Has that location been having live music in this same location in the past years?

5. Ms. Hudson – Yes. The previous owners, which was Tres Cantina, and they had gotten a permit for the patio area back in 2012. At that time, it's my understanding, that's when they started having the live entertainment back there. I visited with the owner at that time a couple times about moving forward with getting a special use. Obviously didn't. And then the business has been sold and so now the new owner is coming forward to make it legal.

6. Mr. Knotts – Are you aware if any complaints have been filed about their live entertainment?

7. Ms. Hudson – It's my understanding the police have been called about noise. Yes.

**PRESENTATION BY THE APPLICANT:**

1. Andrew Harroz, representing the applicant – We also have in attendance the owner, the manager, and one of the musicians that has actually played out there, in case you have any questions. The presentation – I don't want to add too much more. I will answer some of the questions – the practical questions.

Specifically, what we're looking at is a very small patio area. The whole measurement of the patio is under 800 square feet and really usable space is much less than that. There's a little bar. There's also a spot where a smoker is kept. All that is fenced off. You're looking at six tables right here and, as you can tell, they're very small tables. This is max capacity here. Our stage is right back here and, to answer one of the Commissioners' questions, yes, everything amplified is coming toward the building, not out toward the alley. I think this is a little better representation as to the size of the bands that are being played out there. This is very small scale. What we're trying to do is be able to provide some entertainment for a group of 20 to 30 people that are on the back patio summer nights, and trying to do this in a proper way.

I don't know if I want to either just reserve comment, because I realize we do have one protest. And to try and ease some concerns, it's my understanding that the only time police have been called – the only complaints have come from just this one particular neighbor. They may have some more information. We have reached out to all of our neighbors, obviously, through our notices. I've knocked on doors and it doesn't appear that we have any other issues. In fact, several of the businesses enjoy that we have live entertainment and they feel it's very good for Main Street and for this arts district, which the City of Norman seems to be wanting to have.

The only other thing that I really want to point out is the people that are complaining – that are objecting and protesting to this – if you read the staff report, they're in the exact same position in which we're asking to be, and that's to have live entertainment that's going to be amplified out into a patio area. And I understand that theirs is being played inside, but there's a large garage door. We're able to hear from our patio. The whole noise pollution or how they term being force fed that. That's not an issue to us. I don't want to put words in people's mouths, but it seems as if the competition of business is more of the issue than the actual special use permit. I do reserve the right to be able to come back and comment on any of these protests, and just to see if maybe I had the wrong suspicions. But we're wanting to be able to work with the protesters but, unfortunately, they want us just limited to seven events throughout the year, as if we're anybody else, and we want to be able to have more than just seven live events out on the back patio. Does anybody have any questions for me now?

2. Mr. Boeck – Where is Opolis?

3. Mr. Harroz – The Opolis – if you're standing in the alley, basically the two wood fences. Their patio and our patio are directly across the alley from each other. This is where our band is playing, which would be to the south and they're directly to the north. That's their patio. They have a garage door that opens up into their business.

**AUDIENCE PARTICIPATION:**

1. Andrew Nunez, 1600 North Porter Avenue – I represent my business, Opolis Productions, L.L.C., referred to as Opolis, located at 113 North Crawford Avenue, 73069. Right across the alleyway. Opolis shares the alleyway with the applicant, El Chapo, doing business as Puebla Tacos y Tequileria. Puebla Tacos y Tequileria is requesting – the actual definition of a C-3 Special Use code for Live Entertainment to include unlimited outdoor amplified entertainment. This is not a minor change to existing use for occasional live music as stated by the Planning Commission staff report. This is unprecedented request that really does have citywide impacts. I grew up in this town. I've been in the sound reinforcement business forever. I do a lot of outdoor events. I see this as a new thing for this town and it's not just about a little tiny micro thing. It's something

that goes over to Campus Corner, to any patio, or any outdoor business in this town that operates a patio.

Opolis is not in opposition to the occasional outdoor live music. Currently, the City noise ordinance policy already shows seven outdoor noise permits to be allowed per address per calendar year. I think we can all agree that's pretty reasonable. It's a countable allowance for a pretty large amount of volume to be coming outside, which is everybody's space.

Additionally, I'd like to correct the impact section of the staff report. The staff report, and I quote, "Opolis has a garage door on the south side of the building which they open when they have music venues" – I assume they mean events. "The garage door allows patrons to sit on the patio while listening to music." This is not correct. Opolis has a standard metal hinged door, equipped with a self-closure mechanism, as required by the Health Department, on the south side of the building to the existing patio area. We actually keep our door shut unless everything is off and we're not affecting any other business.

At the end of the day, I think it's about being neighborly to the people around you. You know, Norman downtown actually has a lot of bars and a lot of live music going on inside at night. It's already a quite noisy surrounding. I know that there's a lot of other bar owners that want to have patios out back. I know that Red Brick wants to have a patio out back. I'm sure that there's more to come. That's great. We want as much of that sort of arts and entertainment as possible going on. But unless there's a way to keep people accountable and throttle it down, it seems like you're opening up a can of worms that will just keep going. I can only imagine Campus Corner patios going through this. So the biggest problem that I see is that in the special use there's currently no definition for indoor/outdoor. I think it's inferred that they meant live venue would be an indoor thing, because otherwise there wouldn't be outdoor noise variance in place. Because there is no door that can be shut to a loud, unlimited outdoor entertainment in downtown Norman that affects us outside and inside our business, because when there's music out there you can hear it inside. So if we have a soft acoustic thing going inside, you know – music bounces around. I don't have to tell you guys. If there's amplified music hitting a wall, it's just going to bounce back and you're going to hear it all around downtown. I'm sure you can hear it through the neighborhoods. We used to occasionally keep our doors open. We were told we had to shut them; we shut them, because we don't want to irritate our neighbors.

I would like to formally object to the special use request because I think common sense says that it's unneighborly and bad for our City. Any questions?

2. Marian Nunez, 1600 North Porter Avenue – I'm co-owner of Opolis, 113 North Crawford. We've been around for going on 15 years, and we actually started as a music venue and coffee shop. The previous co-owners went on to start Forward Foods. So we've been around doing this for a while. I'm just going to make a few points here.

First, in reference to the staff report, under Analysis, it states "The proposed use of this facility" – Puebla – "fits with the neighborhood/downtown area ..." That's what we're debating here – whether it actually fits – and we don't feel like it does fit. Second, "the majority of uses surrounding this particular facility are commercial businesses, which are predominantly day-time occupancies." This is not quite the case, and there is an ever-growing nighttime economy that would be adversely affected by this. And then third, I would like to bring your attention to the zone ordinances, C-3. And where it is true that the zone ordinances definition of live entertainment does not delineate between indoor and outdoor use, I would like to refer you to requirements for permitted use (d) under Special Uses of C-3, wherein it states: "(d) Light manufacturing or assembly operations" permitted "meeting the following requirements: (4) Not objectionable due to noise, odor, dust, smoke, vibration, danger" etc. It seems only logical and fair to apply the same requirements to one special use as you do to the other under C-3. The approval of their request would open up a noisy can of worms for the City of Norman, and I strongly object to the applicant's special use request.

And then a few points on his. No garage door. They know we don't have a garage door. And this isn't about competition; this is about Norman. This is about the City as a whole

and noise pollution. Their sound bounces off walls and they're having DJs out there. So this isn't small. And I think that's all I have to say. Are there any questions?

3. Mr. Lewis – I do have a question. I don't know whether this would be for our staff attorney or for Susan, our Director of Planning. I'm just wondering what is allowed under this special use. Just a clarification, because it seems that's a point of contention on this item.

4. Ms. Connors – A live entertainment venue is allowed as a special use in C-3, and live entertainment venues are defined in our definitions as "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 ... Nightclubs, bars, and dance halls are typical uses within this category." What doesn't happen here is it doesn't say live entertainment venues are only allowed interior to a building or outside a building, so that's up for your interpretation as the request is before you.

5. Ms. Messner – Just to add to what Susan said, and I think you heard a little discussion about that earlier. The City code does allow for a noise variance, and that's something issued by the Police Department. So if you're going to have a loud party or a loud event that you believe would exceed our noise ordinance, which is something that the Police Department enforces, you can apply for this variance and it essentially guarantees you one warning. The Police would come out if you have a permit on file to make noise, they would say you're too loud, we've gotten a complaint, please take the music or the noise down a notch, rather than issuing a citation on the spot. However, I think that you could probably have outdoor live music that would not be so loud as to violate the noise ordinance, and it might not necessitate a variance every time you had live music outside. And that's something that our police department could look into if a complaint was received – are they exceeding the noise requirements or not.

6. Mr. Lewis – So my understanding from that, then, is a special use for live entertainment isn't just an unlimited decibel amount.

7. Ms. Messner – It would still have to comply with our City noise ordinance. They'd have to work together.

8. Ms. Pailles – The obvious question is what if other restaurants in the block decide to do the same thing with patio entertainment? Because, at some point, it's going to be a real cacophony. Is there any thought or plan or any such thing? For one thing, could the music not be amplified? If you're playing to 30 people, it seems like amplification isn't actually necessary. Is there a plan if every restaurant in the block would like to do this, is there a plan for dealing with the resultant ambient noise?

9. Ms. Connors – The City does not have a plan. But, as Ms. Messner indicated, each one would have to be in accordance with the noise ordinance and get variances from the Police Department if they were going to have amplified music. Our ordinance doesn't indicate any limit. It does, however, in the definition indicate that there can be amplified music. So we're not judging here tonight whether or not there's amplification or not. There can be by our definition.

10. Mr. Knotts – What is the point at which a noise variance has to be requested?

11. Ms. Connors – She's getting her code, because it's not in Section 22 so she needs to get a different section of the code.

12. Mr. Harroz – 80 decibels. What we're trying to do as our next step is, unlike what the protesters are saying, this isn't asking for unfettered access that just allows us 24 hours to bang on

drums as long as we want. That's not what this allows for. We still have to follow other City ordinances. The other item I would like to respond to is that the whole term of a special use permit – I don't think we need to be looking at other requirements of different special use permits to then fall under ours for live entertainment. What we're simply trying to do is, step one, establishing ourselves as this live entertainment, and then we can go and address with other City ordinances and see what we can do as far as to get outside of – by having a live special use permit, what can we then do? Can we still get outside of those 80 decibels, and do we still have to apply 7 nights throughout the entire year? This is a multiple step process, and I don't want this Commission to think that we're asking for unfettered access, because that's not what this permit allows. I've got a manager who also plays.

13. Armando Rivera, 305 E. Main Street – I am the general manager and co-owner of Puebla Mexican restaurant. Just without getting too technical about anything, but we are requesting is to allow local musicians that want to play in our patio during the afternoons. If you notice in the pictures our patio area is small. Of course, we're not asking for this to be every day of the week, especially in the summertime – we haven't had any kind of live music out there because it's too hot. It's only during maybe the spring and it's only probably during the weekends or a Wednesday night. So that being said, not getting too technical about the decibels and all that, the only thing we're requesting – the basis of this is to grant us the permit so we can be comfortable in providing musical entertainment to our guests and also to allow the opportunity to the local artists that are emerging in the area and give them the opportunity to play in front of the public, number one. Number two, we are providing this musical entertainment to our guests free. We're not charging a penny to get in. Number three, if we were so loud as to – the people that are opposing this – if we were so loud, we would not have customers sitting and enjoying the music. So I believe the complaint today has been completely amplified and is not what they portrayed for it to be. I am a musician myself and I'm very sensitive to music. I'm very sensitive to guests and to satisfy the need of food, primarily – it is a food venue. Secondly, we believe in providing live entertainment and opportunities to our local musicians. If you go back and look at the list of people that we have playing here are all local people and they love the venue.

14. Ms. Messner – Commissioners, it's a little bit of a long answer. We have a chart in our City code that spells out different decibel levels for different types of uses – residential, commercial, or industrial. They vary depending on the time of day – either from 7:00 a.m. to 9:00 p.m., or then from 9:00 p.m. to 7:00 a.m. And so for the commercial area, you cannot either create a sound that's 15 decibel levels above the ambient level in that district, which is set at 55 decibels from 7:00 a.m. to 9:00 p.m. and 60 decibels from 9:00 p.m. to 7:00 a.m., or create a 90<sup>th</sup> percentile sound level, a 10<sup>th</sup> percentile sound level – there's multiple levels of sound on this chart – when you measure from the boundary of the property complaining or at any point within the property complaining. I'm happy to let you read it for yourself if you'd like.

15. Mr. Boeck – So what they're asking for would still fall under these decibel requirements?

16. Ms. Messner – Yes.

17. Mr. Harroz – Yes. Since we are going to have this discussion, what I really would like is if you even look at the Opolis permit, I think you all have the ability to be able to tailor this specifically on a case-by-case basis. So, in the event that you want it to be certain nights out of the week and we cap it at a certain decibel level to where everybody knows that we can't exceed this amount, and if we were and the police were to come out and they come and measure it – because that's the process ...

18. Mr. Sherrer – Rather than cloud things, I'd almost like to keep it where it is now. But thank you for that suggestion. That's a great idea.

19. Mr. Boeck – One of the questions I have is if it seems like there's some competitive playing music. How often does Opolis have concerts? Just depends?

20. Mr. Nunez – Our music changes with the seasons, like anything else. We primarily bring in music from around the world, really.

21. Mr. Boeck – It's not like Monday through Friday.

22. Mr. Nunez – No. It's on a per event basis. I should also add that originally Opolis did food and coffee and we have plans on rolling food back out, which is a big thing with the patio. We do some really loud things inside of Opolis. We do. I mean, it's really loud in there. And that's why it is important for us to keep our doors shut. I think all the bars downtown do a lot of live stuff inside, including Puebla. They do live music all the time inside. I think that's great. I don't think it's about not wanting anyone to support the arts and everything like that. It's more about like if we roll food out, or if somebody is in our room and it's like 90 decibels and it's really loud and they want to go out and talk to friends. There's a lot of good music at Puebla, but let's say it's like they have a Latin band out there playing drums – and I've been out there – you can't talk over it. So if you're coming out of a loud room, or any of these other bars that are loud, and you go outside ...

23. Mr. Knotts – Do we know if the Police Department carries a decibel meter?

**DISCUSSION AND ACTION BY THE PLANNING COMMISSION:**

1. Mr. Lewis – This seems like a very simple vote of the Commission. We have a request that's under an approved ordinance that is allowable. We've had Ms. Messner clarify that for us. All the business can do is 15 decibels above what the ambient noise is and that's basically 55 decibels. The business is going to fall under the same guidelines that we do as homeowners if we're blaring music, then the Police will come out. I do know the Police do have access to a gauge that can actually test the decibels – whether they carry one in every car, I'm not sure, but I do know they have one at the Police Department because it has been used before.

*Chris Lewis moved to recommend approval of Ordinance No. O-1617-3 to the City Council. Dave Boeck seconded the motion.*

There being no further discussion, a vote on the motion was taken with the following result:

YEAS	Sandy Bahan, Roberta Pailles, Erin Williford, Chris Lewis, Andy Sherrer, Dave Boeck, Neil Robinson
NAYS	Tom Knotts
MEMBERS ABSENT	Lark Zink

Ms. Tromble announced that the motion, to recommend approval of Ordinance No. O-1617-3 to the City Council, passed by a vote of 7-1.

\* \* \*