



# office memorandum

**Date:** January 4, 2019

**To:** City Council Oversight Committee

**From:** Jeanne Snider, Assistant City Attorney  
Jane Hudson, Interim Planning and Development Director

**Subject:** Noise Ordinance/Live Outdoor Entertainment

## **BACKGROUND**

On August 9, 2018, a presentation was made to the City Council Oversight Committee regarding the noise ordinance. City Council Oversight asked for additional information regarding live outdoor entertainment. This memorandum presents background information and timeline of discussions of the noise ordinance, and specifically live outdoor entertainment.

## **DISCUSSION**

During the past 2-1/2 to 3 years, there have been ongoing discussions regarding the noise ordinance, and specifically how it relates to live outdoor entertainment. There have been a few specific circumstances that brought this matter to the attention of the City. Outdoor noise, and specifically outdoor live entertainment, are particular areas that can cause conflict between multiple land uses or competing businesses.

Below is a timeline, with attachments, that provides a history of outdoor live entertainment venue issue.

08/11/16	Staff Report. Planning Commission. Puebla Tacos y Tequileria requesting Special Use for Live Entertainment on back patio. Staff supported occasional outdoor live entertainment.
09/27/16	City Council Minutes. Consideration for Special Use for a live entertainment venue for Puebla Tacos y Tequileria. Application was tabled and discussion of outdoor live entertainment was sent to CPT Committee.
10/21/16	Memorandum from Planning and Community Development Director to CPT Committee. Thorough discussion regarding Outdoor Live Entertainment Venue, zoning ordinance discussion, recommendation to zoning ordinance, the noise ordinance. Recommended amending Zoning Ordinance to prohibit outdoor live entertainment venues as Special Use and clarify definitions.
10/27/16	CPT Minutes regarding discussion of definition of live entertainment in the Zoning Ordinance.
11/23/16	Memorandum from Planning and Community Development Director to CPT Committee. Discusses possible changes to existing requirements for outdoor live entertainment and possible impacts of outdoor live

	entertainment in the downtown area and continued analysis of Noise Variance Permits and Outdoor Live Entertainment as a Special Use. Specific questions answered to questions such as an “Art and Entertainment District”, impact of downtown music, overlay districts, effect on Center City, should Council hear Special Use case by case, outdoor entertainment only in C-2 and C-3, increasing the decibel limit, allowed only in PUDs. Research indicated cities either prohibit outdoor live entertainment or do not regulate it via zoning, but depend on noise ordinance to regulate on complaint basis. Recommendation to amend Zoning Ordinance to prohibit outdoor live entertainment as Special Use, clarify definitions, set specific guidelines for live entertainment, restrict to indoor only unless Noise Variance Permit; establish Arts and Entertainment Overlay Districts with regulations for amplified, live music.
12/01/16	CPT Minutes regarding definition of live entertainment in the Zoning Ordinance. Thorough discussion of questions presented in 11/23/16 Memorandum.
12/13/16	City Council Minutes. Puebla postponed indefinitely.
02/18/18	Staff Report. Planning Commission. Hollywood Corners requests for rezoning property as a SPUD to allow outdoor live entertainment. Live entertainment was discussed. Staff recommends approval of the SPUD for live entertainment for indoor use only.
06/12/18	City Council Minutes. Approval for outdoor live entertainment with limitations of month, days, and times at Hollywood Corners.
08/03/18	Memorandum from Legal to City Council Oversight regarding noise ordinance, decibel sound levels, noise disturbance or disturbing the peace, enforcement, other cities and constitutional considerations.
08/09/18	City Council Oversight Minutes. Discussion of noise ordinance; request for information regarding live outdoor entertainment and agri-weddings.
11/08/18	Staff Report. Planning Commission. UNP PUD amendment to allow outdoor live entertainment at Redrock Canyon Grill. Staff recommends approval. *City Council approval on 12/11/18. Minutes not available.

The Noise Ordinance sets limitations of sound levels/decibels in each use district. There is nothing in the Zoning Ordinance regulating the use of outdoor entertainment, whether it is live or amplified recorded music. The use and regulation of live outdoor entertainment needs to be defined and regulated in the Zoning Ordinance.

### **POSSIBLE AMENDMENTS TO ZONING ORDINANCE**

Live Entertainment Venue is defined in two places in the Zoning Ordinance, under the definition for Accessory and the definition for Live Entertainment Venue:

“**ACCESSORY.** ... 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.”....

**“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 this category. This category shall not include, in any manner, any Adult Entertainment Establishment.”

Changes to the definitions of Live Entertainment should include clarification of indoor vs. outdoor areas allowing live entertainment as well as including a definition of “outdoor music venue. Listed are suggestions revising current definitions and adding a definition for outdoor music venue.

**“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.”...

**“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 this category **and all activities are located within a fully enclosed building.** This category shall not include, in any manner, any Adult Entertainment Establishment.”

**“OUTDOOR MUSIC VENUE/OUTDOOR ENTERTAINMENT. 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.**

## **CONCLUSION**

Residential uses and businesses located around entertainment venues have a right to be protected from the impacts live/amplified outdoor music venues can create. The Zoning Ordinance (Z.O.) has not been updated and lacks the ability to control or monitor some of the newer issues and uses establishing in Norman. The authors of the Z.O. did not foresee the need to account for protection of adjacent properties from live/amplified outdoor entertainment venues as the use was not present at the time the Z.O. was written. Staff proposes amendments to the Z.O. to possibly alleviate future issues/conflicts.

As with recent applications, if an applicant wants to provide an “outdoor music venue/outdoor entertainment” area then the applicant should be required to request approval of zoning for Special Use (possibly the C-3 District), PUD (Planned Unit

Development), SPUD (Simple Planned Unit Development) or CCPUD (Center City Planned Unit Development) giving City Council the opportunity to review each application on its own merits, considering surrounding land uses. Unless otherwise approved in the zoning request an applicant is required to meet the Noise Ordinance – maximum decibel levels.

City Staff is seeking direction from City Council on how to proceed with the suggested revisions to the Zoning Ordinance.

cc: Mary Rupp, Interim City Manager  
Kathryn Walker, Interim City Attorney



August 11, 2016

Staff Report  
Planning Commission  
Puebla Tacos y Tequileria

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ORDINANCE NO. O-1617-3

ITEM NO. 4

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**STAFF REPORT**

**GENERAL INFORMATION**

APPLICANT	El Chapo, L.L.C., dba Puebla Tacos y Tequileria
REQUESTED ACTION	Special Use for Live Entertainment Venue
EXISTING ZONING	C-3, Intensive Commercial District
SURROUNDING ZONING	North: C-3, Intensive Commercial District East: C-3, Intensive Commercial District South: C-3, Intensive Commercial District West: C-3, Intensive Commercial District
LOCATION	305 E. Main Street
LOT AREA	4,484 Square Feet
PURPOSE	Live Entertainment (Patio)
EXISTING LAND USE	Commercial
SURROUNDING LAND USE	North: Commercial East: Commercial South: Commercial West: Commercial
LAND USE PLAN DESIGNATION	Commercial

**SYNOPSIS:** The applicants run an existing restaurant, Puebla Tacos y Tequileria, located at 305 E. Main Street. This general area of Main Street has often been referred to as the "Downtown Arts District", although never officially branded with the name. The applicants recently purchased this business, previously known as Tres' Cantina, and have continued the use as the previous owners had done in the last few years. The previous owner started the business in fall of 2011 and then in spring of 2012 they added approximately 790 square feet of back patio area to accommodate outdoor seating and live music. However, Special Use for the live entertainment use located on the back patio had never been granted for the site so the current owner/applicant is requesting Special Use for Live Entertainment to allow the use to continue and properly zone the site.



**ANALYSIS:** The Zoning Ordinance (Z.O.) is cumulative; for example, a use allowed by right in the C-1, Local Commercial District is allowed by right in the C-2, General Commercial District and again in the C-3, Intensive Commercial District. In addition Special Uses in C-1 are allowed by right in the C-2 and C-3 Districts, without requesting Special Use from City Council.

In the C-1 District a restaurant is an allowed use; a restaurant can have live entertainment and/or a dance floor as long as all such activity is fully within an enclosed building, provided the kitchen remains open with full food service whenever live entertainment is offered.

As previously outlined, due to the Z.O. being cumulative the live entertainment Puebla is providing to their guests would be an allowed use in the C-3 District if the activity was within the restaurant. However, what requires Puebla to request Special Use is the fact that their live entertainment venue is on the back patio, adjacent to the back alley.

The definition of Live Entertainment Venue in the Zoning Ordinance does not delineate indoor or outdoor venues as part of the use.

Live Entertainment Venue is defined 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 or cover charge to observe that entertainment. Night clubs, bars and dance halls are typical uses within this category. This category shall not include, in any manner, any Adult Entertainment Establishment". Puebla Tacos does not charge an additional fee/cover charge for the live entertainment.

The proposed use of this facility fits with the neighborhood/downtown area and as stated the patio area is small, approximately 790 square feet. There is a back bar with seating for 6 and approximately 6 tables. There is seating on the stage/raised area, which is removed when live entertainment is provided. The majority of uses surrounding this particular facility are commercial businesses, which are predominantly day-time occupancies.

As with other downtown businesses which are zoned C-3, there are no on-site parking requirements. Main Street provides on-street parking, Crawford Street has some on-street parallel parking and a nearby parking lot is available.

**IMPACTS:** An adjacent business, Opolis, received Special Use for a Nightclub in fall of 2003, this allowed for live entertainment. The Special Use for Nightclub was for the building located at 113 Crawford Street. In the fall of 2012 Opolis received a second Special Use for Bar, Lounge or Tavern. This second Special Use included the existing building and an area to the south of the building which included a new patio area. Opolis has a garage door on the south side of their building which they open when they have music venues; this garage door allows patrons to sit on the patio area while listening to music. There has been discussion that the two businesses impact one another when each has an event on the same night.

**OTHER AGENCY COMMENTS:**

• **PRE-DEVELOPMENT MEETING – PD NO. 16-11** **MEETING JULY 28, 2016**

Comments from the adjacent property owner attending the meeting

- The owners of Opolis, Andy and Marian Nunez, are opposed to this request. They support the right for someone to rezone their property and respect the City's

process to do so but feel the approval of this request will negatively impact their business.

- o Andy Nunez stated the City has a generous allowance for issuing permits to have outdoor entertainment, 7 permits annually, and feels that is adequate. Andy stated on the nights they have an event and open their garage door, whether it be an art show or live music, his clients sitting on the patio are being "force fed" the music from Puebla, on the nights they do have an event. Andy prefers background music on a patio.

- **PARK BOARD** Commercial uses do not require parkland dedication.
- **PUBLIC WORKS** The property is platted; utilities, streets and sidewalks are existing. Approval of this Special Use will not require any modification to the site which would require additional public improvements.

**STAFF RECOMMENDATION:** This request is a minor change to the existing use. The applicants are not requesting any additional square footage so the occupant load will stay the same. Other than the permission to have occasional outdoor live entertainment, the use of this facility will not change. Staff supports this request for Special Use for Live Entertainment and recommends approval of Ordinance No. 1617-3.



September 27, 2016

City Council Minutes  
Consideration for Special Use for  
Live Entertainment Venue



Item 30, continued:

Items submitted for the record

1. Text File PP-1617-1 dated June 22, 2016, by Ken Danner, Subdivision Development Manager
2. Location map
3. Preliminary plat
4. Preliminary site plan
5. Planning Commission Staff Report dated August 11, 2016, recommending approval
6. Letter requesting waiver dated July 5, 2016, from Christopher D. Anderson, P.E., SMC Consulting Engineers, P.C., to Mr. Andy Sherrer, Chairman, Planning Commission
7. Traffic Impacts Development Review Form dated July 28, 2016, prepared by David R. Riesland, P.E., City Traffic Engineer, for Jolley Addition
8. Predevelopment Meeting Summary Case PD-16-6 dated April 28, 2016, submitted by Mike Jolley Investments, L.L.C., for property located on the northwest corner of 36th Avenue N.E. and Cascade Drive
9. Greenbelt Commission final Comments dated April 18, 2016
10. Pertinent excerpts from Planning Commission minutes of August 11, 2016

and the question being upon approving the preliminary plat for Jolley Addition (including a replat of Olivet Baptist Mission) and waiver of alley requirements for the commercial property, a vote was taken with the following result:

YEAS: Councilmembers Castleberry, Chappel, Clark, Hickman, Mayor Miller

NAYES: Councilmembers Holman and Karjala

The Mayor declared the motion carried and the preliminary plat for Jolley Addition (including a replat of Olivet Baptist Mission) and waiver of alley requirements for the commercial property was approved.

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Item 31, being:

CONSIDERATION OF ORDINANCE O-1617-3 UPON SECOND AND FINAL READING: AN ORDINANCE OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AMENDING SECTION 460 OF CHAPTER 22 OF THE CODE OF THE CITY OF NORMAN SO AS TO GRANT SPECIAL USE FOR A LIVE ENTERTAINMENT VENUE (OUTDOORS) IN THE C-3, INTENSIVE COMMERCIAL DISTRICT FOR LOT THREE (3), BLOCK TWENTY-TWO (22), NORMAN ORIGINAL TOWN, CLEVELAND COUNTY, OKLAHOMA; AND PROVIDING FOR THE SEVERABILITY THEREOF. (305 EAST MAIN STREET)

Ordinance O-1617-3 having been Introduced and adopted upon First Reading by title in City Council's meeting of September, 13, 2016, Councilmember Hickman moved that Ordinance O-1617-3 be adopted upon Second Reading section by section, which motion was duly seconded by Councilmember Chappel;

Items submitted for the record

1. Text File O-1617-3 dated July 26, 2016, by Jane Hudson, Principal Planner
2. Ordinance O-1617-3
3. Location map
4. Staff Report dated August 11, 2016, recommending approval
5. Predevelopment Summary Case PD 16-11 dated July 28, 2016, for El Chapo, L.L.C., d/b/a Puebla Tacos y Tequileria located at 305 East Main Street
6. Protest map dated September 19, 2016, containing 33.7% protest within subject tract
7. Letter of protest filed received August 5, 2016, from Andy and Marian Nunez, OPOLIS Productions, Inc., to City of Norman Planning Commission
8. Norman Code of Ordinances, Chapter 22 Section 425.1, C-3, Intensive Commercial District
9. Letter of protest received September 19, 2016, from Andy and Marian Nunez, OPOLIS Productions, L.L.C., to Neighbor
10. Petition of protest received September 19, 2016, containing 7 signatures
11. Letter received September 22, 2016, from Andy and Marian Nunez, OPOLIS Productions, L.L.C., to City Council
12. Photographs of alley between OPOLIS and Puebla
13. Explanation referring to staff note revisions following the Planning Commission meeting received September 22, 2016
14. Pertinent excerpts from Planning Commission minutes of August 11, 2016

## Item 31, continued:

## Participants in discussion

1. Mr. Andrew Harroz, Mulinex Edwards Rosell & Goerke, 3030 Oklahoma Tower, 210 Park Avenue, Oklahoma City, attorney representing the applicant
2. Ms. Susan Connors, Director of Planning and Community Development
3. Mr. Keith Humphrey, Police Chief
4. Mr. Andrew Nunez, 1600 North Porter Avenue, made comments
5. Ms. Marian Nunez, 1600 North Porter Avenue, made comments
6. Mr. Armando Rivera, General Manager, Puebla
7. Mr. Sean Braddy, 1406 Kansas Street, made comments
8. Ms. Mary Katherine Long, 1630 Cruce Street, protestant
9. Mr. Seth Steward, 1829 Elmhurst Avenue, made comments

Councilmember Karjala called for the question. An objection from Council was noted and City Attorney Jeff Bryant stated without consensus of Council, a motion and second is required, hearing none, Council discussion continued.

Thereupon, Councilmember Hickman moved that Ordinance O-1617-3 be tabled and sent to the City Council Community Planning and Transportation Committee to return at the next City Council meeting following a recommendation from the City Council Community Planning and Transportation Committee; which motion was duly seconded by Councilmember Holman;

## Participants in discussion

1. Mr. Andrew Harroz, Mulinex Edwards Rosell & Goerke, 3030 Oklahoma Tower, 210 Park Avenue, Oklahoma City, attorney representing the applicant
2. Ms. Alexis Miller, 114 Anoil Drive, proponent
3. Mr. Jeff Bryant, City Attorney

and the question being upon tabling Ordinance O-1617-3 and sending it to the City Council Community Planning and Transportation Committee to return at the next City Council Meeting meeting following a recommendation from the City Council Community Planning and Transportation Committee, a vote was taken with the following result:

YEAS:	Councilmembers Castleberry, Chappel, Clark, Hickman, Holman, Karjala, Mayor Miller
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NAYES:	None
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The Mayor declared the motion carried and Ordinance O-1617-3 was tabled and will be sent to the City Council Community Planning and Transportation Committee to return at the next meeting following a recommendation from the City Council Community Planning and Transportation Committee.

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## Item 32, being:

## MISCELLANEOUS DISCUSSION

LGBT History Month. Mr. Michael Ferguson, 7201 Nutmeg Drive, thanked the City Council for the vote to make Norman a more inclusive community by declaring October as Lesbian, Gay, Bisexual, Transgender (LGBT) History Month. He said many of the people who do not support LGBT Month are actually silent members.

Ms. Eve Spaulding, 6700 103rd Avenue N.E., read the last portion of the LGBT History Month proclamation. She read several comments she received supporting her belief that this proclamation is not inclusive. She said if Council truly wants an inclusive community, they should not have voted for this proclamation because the subject matter does not join anyone together. She said the people who have spoken against this proclamation have been cursed, made fun of, threatened, and accused of hate and violence. She asked how her belief allows people to blame her for a person's suicide and to say her children should be put to death in front of her. She said the proclamation calls for dignity and inclusiveness and the threats and name calling are not either of those. She said she hoped that Council could look beyond the emotions of this topic and recognize for the good of the entire community, a no vote was the right way to proceed. She said this was just another step towards dividing the community.



October 21, 2016

Memorandum from Planning and Community  
Development Director to CPT Committee





**TO:** Community Planning and Transportation Committee Members

**FROM:** Susan Connors, AICP, Director of Planning and Community Development *SFC*

**DATE:** October 21, 2016

**RE:** Discussion of Special Use for Live Entertainment - Indoor vs. Outdoor

### **BACKGROUND**

At the September 27<sup>th</sup> City Council meeting, Council voted to table an application for Special Use for an "Outdoor Live Entertainment Venue", sending the item to the Community Planning and Transportation Committee for additional research and discussion. To our knowledge, City staff has never received a request for an outdoor live entertainment venue, in the downtown area or other areas of the City. This application in question is for a restaurant, Puebla Tacos y Tequileria, located at 305 East Main Street. The area proposed for the live entertainment is on the patio area, adjacent to the alley.

Previous applications submitted as Special Uses for Live Entertainment Venues have not designated between indoor vs. outdoor proposals; therefore, staff has always processed the applications for an indoor use.

Staff was directed to investigate the possibility of changes to the existing ordinances and/or impacts of outdoor live entertainment in the downtown area, along Main Street.

### **DISCUSSION**

Although outdoor live music venues are not a new thing, in recent years they have become more prevalent at small venues such as restaurants/outdoor patios and street cafés. These music venues can consist of amplified or non-amplified music and a capella or instrumental music. In any case the music venue can reach decibel levels higher than allowed by ordinance and extend past property boundaries. The venues can be a nuisance to adjacent properties – commercial and/or residential uses. Many municipalities have struggled with how to regulate the music venues and minimize the impacts on adjacent properties.

Noise is usually measured in decibels. What is a decibel? Many do not know what a decibel is or what to compare it to when discussing sound levels. Staff found the attached Noise Level Chart/decibel scale for reference, Exhibit A, to assist in the discussion of this issue. This chart gives the reader an idea of what levels of sound are when trying to determine how loud something may be when adjacent to a property or venue. The standard decibel level noted in the majority of the research is 55 decibels; research indicates that 50 decibels is equal to two people having a conversation at home and 60 decibels is comparable to a conversation that takes place at a restaurant.

In recent years Council has had the opportunity to review, reject or adopt several ordinances for varying Live Entertainment Special Use requests along Main Street and the general vicinity:

- Special Use – 321 East Main Street, Blue Bonnet Bar: Bar, Lounge or Tavern (Approved May 31, 1977)
- Special Use – 318 West Main Street, The Black Owl Café: Nightclub (Live Entertainment) (Denied - Did not receive super majority vote required by 20% protest, March 26, 2002)
- Special Use – 113 North Crawford Avenue, Opolis: Nightclub (Live Entertainment) (Approved April 23, 2002)
- Special Use – 113 North Crawford Avenue, Opolis: Bar Lounge or Tavern (Approved October 23, 2012)
- Special Use – 300 East Main Street, Main Street Event Center: Bar, Lounge or Tavern with Live Entertainment (Approved March 13, 2012)

### **Zoning Ordinance Discussion**

The Zoning Ordinance (Z.O.) is cumulative in the commercial zoning districts; for example, a use allowed by right in the C-1, Local Commercial District is allowed by right in the C-2, General Commercial District and again in the C-3, Intensive Commercial District. In addition, the majority of Special Uses in the C-1 District are also allowed by right in the C-2 and C-3 Districts. Live Entertainment Venue is not an allowed use or a Special Use in the C-1 District; therefore, a request for Special Use for a Live Entertainment Venue in the C-2 and C-3 zones requires a Special Use application for consideration and adoption by City Council.

In the C-1 District, a restaurant is an allowed use; by definition a restaurant can have live entertainment and/or a dance floor as an accessory use as long as all such activity is fully within an enclosed building and provided the kitchen remains open with full food service whenever live entertainment is offered. This use then carries over as allowed in C-2 and C-3 zones.

The outdoor live entertainment Puebla wants to provide to their guests is not an allowed use in the C-3 District. However, since they are a restaurant, they are allowed to have live music inside the building. The definition of Live Entertainment Venue in the Z.O. is as follows:

**"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 this category. This category shall not include, in any manner, any Adult Entertainment Establishment."

The definition of Live Entertainment Venue in the Z.O. does not restrict or delineate indoor or outdoor uses. However, historical data shows that Special Use applications for Live Entertainment have been processed as indoor

venues. What requires Puebla to request Special Use is the fact that their request for a live entertainment venue is located outside the restaurant on the back patio, adjacent to the back alley.

The existing regulations regarding night clubs and live entertainment in the Zoning Ordinance date back to the 1954 adoption with amendments in the 70's, 90's and early 2000's.

## **Research**

Research shows that the greater majority of the cities that staff looked at do not allow outdoor live entertainment as an allowed use or under Special Use, amplified or acoustical, on patios whether they are adjacent to a residential area or not; the majority require separate "Noise Permits" for the specific event. The welfare, the contentment and the feeling of well-being of citizens/residents is of great concern.

Several cities have additional restrictions on sound measured at the property line. For example, one city requires a restaurant/bar that has a live entertainment venue inside the building to not exceed 70 to 85 decibels at the property line. This was standard in the research when reviewing the impacts of noise on adjacent property owners, both commercial and residential.

While many articles discuss the financial and artistic negative impacts of restrictive noise ordinances controlling the level of music allowed on a site, the attached research shows the majority of the municipalities continue to maintain strict ordinances to control or minimize impacts on adjacent businesses and residents as shown in these cities, exhibits attached:

- o Exhibit B – City of Columbia, MO
- o Exhibit C – City of Denton, TX
- o Exhibit D – City of Manhattan, KS
- o Exhibit E – City of Minneapolis, MN
- o Exhibit F – City of Austin, TX
- o Exhibit G – City of Hastings, MN
- o Exhibit H – City of Norman, OK

The majority of the Ordinances reviewed were similar to what the City of Norman currently has in place to control noise nuisances. The majority have the opportunity for residents and businesses, same as Norman, to request a Noise Permit for the occasional music venue or festival.

With the ongoing review of the proposed Center City Form Based Code/Center City PUD; a planning model that places higher density housing, urban renewal, residential and mixed uses in close proximity to one another, adding the allowance for possible outdoor live entertainment venues in such close proximity may create nuisance issues.

While the downtown area of Norman, businesses located along Main Street, could be an ideal location for outdoor live entertainment, to allow a 24/7/365 venue for such live entertainment outdoors would be a disservice to the business and citizens of Norman as a whole. If the Z.O. is amended to allow for such outdoor live entertainment, and it is not limited to the downtown area, there will be more businesses requesting such Special Uses, possibly impacting adjacent property owners. For example: Campus Corner is a very compact business district, with residential scattered in close proximity. Allowing for outdoor live entertainment creates an opportunity for greater impacts to the business sector and residential area in such close proximity.

Allowing music, as long as it is below a set decibel level, is a great plan on paper; however, the average citizen doesn't really know what 55 or 75 decibels really equates to so Norman PD is required to intervene between two properties or business owners that have concerns about the level of sound coming from an adjacent property.

Residential uses and businesses located around music venues have a right to be protected from the impacts live music venues create. If changes are made to the ordinances which allow outdoor live music venues, without also looking at the aspects of development ordinances to establish guidelines for sound proofing glass/windows/doors and other protective measures for existing and new developments in the downtown area, we may be creating a new problem.

The Z.O. has not been updated recently; it lacks the ability to control or monitor some of the newer issues and uses establishing in Norman. The authors of the Z.O. did not foresee that they needed to account for protection of adjacent properties from live entertainment venues; the Z.O. was written so there is enough ambiguity for some uses to occupy areas not initially intended for that use. Staff proposes amendments to the Z.O. to alleviate future issues.

Many cities that do allow outdoor live entertainment venues already have an established entertainment district where the live music is allowed during specified periods. Without the establishment of a defined Art and Entertainment District staff sees no valid supporting evidence that changes need to be made to allow an option for outdoor live entertainment venues. Staff does recommend that until an Arts and Entertainment District is established, an amendment to the Z.O. be processed to specifically state the restrictions for live entertainment venues, as well as tighter restrictions on audible amplified music levels at a property line.

## **RECOMMENDATIONS FOR AMENDMENTS TO ZONING ORDINANCE**

Live Entertainment Venue is defined in two places in the Zoning Ordinance, under the definition for Accessory and the definition for Live Entertainment Venue:



**"ACCESSORY.** ... 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."....

**"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 this category. This category shall not include, in any manner, any Adult Entertainment Establishment."

**Changes to the definitions of Live Entertainment should include clarification of indoor vs. outdoor areas allowing live entertainment as well as including a definition of "outdoor music venue."**

**"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."...

**"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 this category **and all activities are located within a fully enclosed building.** This category shall not include, in any manner, any Adult Entertainment Establishment."

**"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.** (Not currently allowed in any zoning district)

## **NORMAN NOISE ORDINANCE**

Currently, if a business wants to have outdoor amplified entertainment over the allowed decibels they are required to apply for a Noise Variance Permit, following the restrictions and guidelines set forth in the permit. (Exhibit H)

The Code of Ordinances, Article III. Noise Control outlines the requirements for a Noise Permit. Applications for a permit for relief from the noise restrictions may be made to the City Manager or authorized representative (in this case Norman Police Department). If a permit is granted, it shall contain all conditions for which the permit has been granted, including but not limited to the effective dates, time of day, location, sound pressure level, or equipment limitations. The relief from the noise restrictions requested may be granted on good and sufficient showing that:

- (1) Additional time is needed for the applicant to alter or modify the activity or operation to comply;
- (2) The activity, operation or noise source will be of a temporary duration;
- (3) There is not a reasonable alternative available to the applicant for the event.

With the variance, additional conditions or requirements may be required to minimize adverse effects on the community or surrounding neighborhood. A permit can be approved for a maximum of up to four consecutive days, and no more than seven permits per site annually. However, an applicant may petition for additional permits on appeal to City Council.

Aside from decisions to amend the Zoning Ordinance, any sounds, whether live or recorded music or loud noises in general, everyone must meet the standards of the adopted Noise Ordinance. If the standards of the Noise Ordinance cannot be met an application to the Norman Police Department for a Noise Variance Permit is required.

Staff suggests the Noise Ordinance, Article III. Noise Control, remain with no changes at this time and amend the Z.O. as noted.

## **CONCLUSION**

The following are the main suggestions, based on our research:

1. Amend the Zoning Ordinance to prohibit outdoor live entertainment venues as a Special Use and clarify definitions. Setting specific guidelines for Live Entertainment – restrict to indoor only unless a Noise Permit from the Norman Police Department has been issued to allow for the amplified live music, both indoors and outdoors.
2. Establish specific guidelines prohibiting live music on public rights-of-way/sidewalk cafés.
3. Establish additional opportunities for Music Festival allowances for amplified/live music.



October 27, 2016

CPT Minutes

Live Entertainment in Zoning Ordinance

COUNCIL  
COMMUNITY PLANNING AND TRANSPORTATION  
COMMITTEE MINUTES

October 27, 2016

The City Council Community Planning and Transportation Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 4:30 p.m. in the Conference Room on the 27th day of October, 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, Clark, Hickman, Karjala, and Chairman Holman
ABSENT:	None
STAFF PRESENT:	Mayor Lynne Miller Ms. Susan Connors, Director of Planning and Community Development Sergeant James Fletcher, Police Department Ms. Jane Hudson, Principal Planner Mr. Keith Humphrey, Police Chief Captain Eric Lehenbauer, Police Department Ms. Leah Messner, Assistant City Attorney

Item 1, being:

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

Ms. Karleen Smith, Marketing Specialist for CART, highlighted CART Ridership Reports for September 2016, and said ridership has increased 7% from September 2015, and 7% year-to-date (July-September). She said CART attributes this increase to added service on Main Street, Alameda Street, route adjustments to the Research Center on Highway 9, and the three park and ride options located at Sooner Mall, Bethel Baptist Church, and Lloyd Noble Center. She felt that some of the ridership could be contributed to the millennial generation who tend to want modes of transportation other than cars. Chairman Holman said the increased frequency of buses (every thirty minutes) could be a factor as well because people see that as a reliable form of transportation.

Ms. Smith said CARTaccess transported 3,118 passengers, an increase of 10% over the same time last year; however, CART continues to encourage riders who are able to ride the fixed route free of charge to do so, and to use the park and ride locations.

Ms. Smith said CART will be adding a "trip planner" to their website that will help people navigate from Point A to Point B. Councilmember Holman asked if the CART app tracks buses in real time and Ms. Smith said yes.

CART participated in a New Employee Resource Fair on September 22, 2016, and answered questions about bus routes and distributed pens and rider guides. CART brought their trolley to the annual Touch-A-Truck Event at the Cleveland County Fairgrounds on September 24, 2016.

Ms. Smith said five proposals for a Bike Share Program are still being reviewed and CART should have more information next month. The Request for Proposal (RFP) required the vendor to begin with 10 to 15 stations with at least 50 bicycles and be able to expand to up to 23 stations and 100 bicycles. She said station locations will be identified by the successful vendor and approved by the University of Oklahoma (OU). She said for the first year or two the service will be free to students.



Item 1, continued:

Ms. Smith said Councilmember Clark participated in a “Read and Ride” event on October 22, 2016, where she read out loud to her children while riding the Alameda/East Norman route. Councilmember Clark said she enjoyed the experience and would be more than willing to do that twice a year in the spring and fall.

CART has been working with City Staff on placing bus stop signs on approximately 25 to 30 unmarked bus stops throughout the City and the new bus shelter has been installed on Main Street at 12th Avenue N.E.

Chairman Holman said he is concerned about the temporary bus stop at 24th Avenue S.W. at Lindsey Street because when the bus is on West Lindsey Street and turns onto 24th Avenue S.W. 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 S.W. 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 which will address issues for fixed route and CARTaccess. This will give CART a chance to work with difference organizations in Norman that interface with people with disabilities and received feedback on improving the bus system overall.

Items submitted for the record

1. Cleveland Area Rapid Transit Ridership Totals for the Month of September 2016
2. Cleveland Area Rapid Transit Monthly Report for September 2016, with Attachment 1, CART. We Connect You Rider Survey, and Attachment 2, Photo of bus stop shelter located at Main Street and 12th Avenue N.E., and Attachment 3, Routes 10 - Main Street and 12 – Lindsey West Temporary Stop for 24-24th SW/Lindsey

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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 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 outdoor 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.

Item 2, continued:

The standard decibel level is 55 decibels and research indicates 55 decibels is equal to two people having a conversation at home and 60 decibels is comparable to a conversation that takes place between two people at a restaurant. Council has had the opportunity over the years to review, reject, or adopt several ordinances for varying live entertainment special use requests along Main Street and those that have been approved are for indoor live entertainment, but no outdoor live entertainment venues have ever been granted.

Ms. Connors said the Zoning Ordinance is cumulative in the commercial zoning districts, i.e., a use allowed *by right* in the C-1, Local Commercial District, is allowed in C-2, General Commercial District, and again in C-3, Intensive Commercial District. The majority of special uses in C-1 is also allowed by right in C-2 and C-3; however, live entertainment venues are not an allowed use or a special use in C-1; therefore, a request for special use for a live entertainment venue in C-2 and C-3 zones require consideration by Council. In C-1, a restaurant is an allowed use and by definition a restaurant can have live entertainment and/or dance floor as an accessory use as long as all such activity is fully within an enclosed building *and* provided the kitchen remains open with full food service whenever live entertainment is offered. This use then carries over as allowed uses in C-2 and C-3.

Ms. Connors said research shows the greater majority of cities do not allow outdoor live entertainment as an allowed use or a special use, amplified or acoustical, on patios whether they are adjacent to a residential area or not. The majority of cities also require "Noise Permits" for special events because the welfare, contentment, and feeling of well-being of citizens/residents are of great concern.

Several cities have additional restrictions on sound measured at the property line, i.e., one city requires a restaurant/bar that has live entertainment inside the building to not exceed 70 to 85 decibels at the property line. This was standard in the research when reviewing the impacts of noise on adjacent property owners, both commercial and residential. While many cities discuss the financial and artistic negative impacts of restrictive noise ordinances controlling the level of music allowed on a site, research shows the majority of municipalities continue to maintain strict ordinances to control or minimize impacts on adjacent businesses and residents.

Ms. Connors said the majority of ordinances reviewed are similar to what the City of Norman currently has in place to control noise nuisances. The majority of the cities researched also have the opportunity for residents and businesses to request a Noise Permit for the occasional music venue or festival, which Norman also has.

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 allowing music below a set decibel level is a great plan on paper; however, the average citizen does not know what 55 decibels or 75 decibels really equate to so the Norman Police Department (NPD) has to intervene between property owners that have concerns about the level of sound coming from an adjacent property. Residents and businesses located around music venues have a right to be protected from the impacts live music venues create. If changes are made to the ordinances to allow outdoor live music venues without looking at the aspects of development ordinances to establish guidelines for sound proofing (glass/windows/doors) and other protective measures for existing and new developments in the downtown area the City may be creating a new problem.

Item 2, continued:

Ms. Connors said the Zoning Ordinance lacks the ability to control or monitor some of the newer issues and uses established in Norman. The authors of the Zoning Ordinance did not foresee that they needed to account for protection of adjacent properties from live entertainment venues; however, there is enough ambiguity for some uses to occupy areas not initially intended for that use.

Ms. Connors said many cities that allow outdoor live entertainment venues have an established entertainment district where the live music is allowed during specified periods. Without the establishment of a defined Arts and Entertainment District, Staff sees no valid supporting evidence that changes need to be made to allow an option for outdoor live entertainment venues. Staff recommends that until an Arts and Entertainment District is established, an amendment to the Zoning Ordinance be processed to specifically state the restrictions for live entertainment venues as well as tighter restrictions on audible amplified music levels at the property line.

Live Entertainment is defined in two places in the Zoning Ordinance as follows:

ACCESSORY. 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.

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. This category shall not include, in any manner, any Adult Entertainment Establishment.

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:

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.

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.

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

**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.**

Currently, if a business wants to have outdoor amplified entertainment over the allowed decibels they are required to apply for a Noise Variance Permit and follow the restrictions and guidelines set forth in the permit.

Ms. Connors said Article III of the Code of Ordinances outlines requirements for a Noise Permit through the Police Department. If a permit is granted, it will state all the conditions for which the permit was granted, including but not limited to, effective date(s), time of day, location, sound pressure level, or equipment limitations. Relief from the noise restrictions may be granted on good and sufficient evidence showing that

Item 2, continued:

additional time is needed for the applicant to alter or modify the activity or operation to comply; the activity, operation, or noise sources will be a temporary duration; and there are not reasonable alternatives available to the applicant for the event. Additional conditions or requirements may be required to minimize adverse effects on the community or surrounding neighborhood. A permit can be approved for a maximum of up to four consecutive days and no more than seven permits per location per year is currently allowed. Staff recommends that no changes be made to the noise permit at this time.

Ms. Connors said based on research, Staff recommends the following:

1. Amend the Zoning Ordinance to prohibit outdoor live entertainment venues as a Special Use and clarify definitions. Set specific guidelines for live entertainment and restrict to indoor only unless a noise permit is issued to allow for amplified live music, both indoors and outdoors.
2. Establish specific guidelines prohibiting live music on public rights-of-way/sidewalk cafes.
3. Establish additional opportunities for music festival allowances for amplified/live music.

Chairman Holman said Austin, Texas, has a well-known entertainment district that was established many years ago, but has recently seen an influx of high density residential units being built in the area and are beginning to experience issues with residences complaining about noise. He said Norman may never be the size of Austin, but this is something that should be addressed since Norman is looking at allowing more residential development in Downtown Norman. He would not like to see new residential development negatively impact long standing music venues or vice versa. Ms. Connors said Austin has a one day noise permit, a multi-day noise permit, and an outdoor music venue permit, but there is a very long process for permitting these. Many cities have Special Event applications that are required to be submitted at least 30 days prior to an event.

Councilmember Hickman said Staff has done a great job on research and asked if the definition for a Live Entertainment Venue should incorporate a noise decibel limit. He asked if most indoor music venues have a noise decibel limit and Ms. Connors said no. Councilmember Hickman asked if indoor venues could be as loud as they want and Ms. Leah Messner, Assistant City Attorney, said no one can violate the noise ordinance regardless of where the noise occurs.

Councilmember Hickman asked what would happen if a live music venue placed a speaker outside of the establishment so the music could be piped outside. He is assuming the speaker would not be allowed and Ms. Connors said that is correct. Councilmember Hickman said that may need to be clarified and suggested the following:

**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, including any speakers.** This category shall not include, in any manner, any Adult Entertainment Establishment.

Councilmember Allison said there are restaurants that currently pipe music outdoors through speakers for customers outdoors and Ms. Messner said under the City's current noise ordinance that would be allowed as long as they are not exceeding the noise decibel level. Councilmember Hickman said piping stereo or radio music outdoors through a speaker can be as much of a problem as having a band outside, especially downtown and in Campus Corner. Ms. Messner said live entertainment venue music could not be piped outside, but lower decibel music from a radio or stereo system could be low enough to not violate the noise ordinance.



Item 2, continued:

Councilmember Allison said according to the noise chart, a rock band's decibel level is 110 so how can someone comply with the noise permit if the noise permit's decibel limit is 80 decibels? Ms. Messer said it depends on where the noise is measured from as the noise level directly in front of a guitar may be 110 decibels, but could be only 85 decibels if measured from the property line.

Councilmember Allison said some ordinances exempt stadiums and asked if Norman's ordinance has that exemptions and Ms. Connors said the stadium is located on State property and the City does not have jurisdiction over State property. Councilmember Karjala asked about Norman High School and Ms. Messner said that is also State property. Chairman Holman said Norman High School recently installed a new sound system in their stadium which is considerably louder than the old one. Councilmember Karjala said she has received numerous complaints about this and Ms. Messner said the schools are typically willing to work with the City so Staff could meet with them regarding the noise level projecting to adjacent properties. Captain Eric Lehenbauer, Norman Police Department, said Chapter 10, Section 308, of the Code of Ordinances lists exemptions to the noise ordinance and sporting events are an exemption.

Councilmember Hickman asked if the word "live" should be added to the Outdoor Music Venue definition to state "Live Outdoor Music Venue" and Ms. Connors said the language encompasses all sound whether it is live music or not and Staff only created the definition in case Council wanted to move in the direction of allowing special use for live entertainment venues.

Councilmember Allison said Staff's second recommendation is to establish specific guidelines prohibiting live music on public-rights-of-way/sidewalk cafes so that would prohibit someone with a guitar from playing outdoors in front of a restaurant or business and he does not necessarily want to do that. He said Second Friday Art Walk is an example of that taking place. He is also not completely in agreement to prohibit outdoor live entertainment venues as a special use because what if the City has someone that wants to build an amphitheater type music venue in Norman? He said the noise permit is only issued seven times per year per location so that would not work for that type of venue. He said Denver, Colorado has Fiddler on the Green, which is a large amphitheater type venue and Ms. Connors said that type of venue could fall under Planned Unit Development (PUD) zoning, but Staff will research Fiddler on the Green to see how it is operated.

Mayor Miller said an amphitheater venue would not work in Downtown Norman or in Campus Corner as it would need to be in a place with lots of space. Councilmember Hickman said if the definition for an outdoor music venue were in place then someone who wanted to build an amphitheater could include that definition in the PUD which would allow them to have amplified sound that is not fully enclosed. Ms. Connors said that is one way to look at it, but a PUD creates its own definition of uses; however, with the proposed definition everyone would know what an outdoor music venue is. Councilmember Hickman said if the ordinance is amended to include the definition, Staff could also amend the ordinance to allow outdoor music venues in C-2 or C-3 under a Special Use Permit. He said this would allow flexibility in C-2 and C-3.

Councilmember Clark said Hollywood Corners in Ward 6 has a full stage outdoors and they have more than seven music events each year and Ms. Messner said those are typically private parties and that location is agriculturally zoned. Chairman Holman asked if being agriculturally zoned is what allows that to take place and Ms. Messner said no, it is allowed because it is a private party and not open to the public.

Chairman Holman said if the applicant, Puebla, wanted to have a private party on their patio with live music would that be allowed? Ms. Connors said the decibel level would come into play because they are in close proximity to residential areas. Councilmember Clark asked if the noise ordinance would kick in for Hollywood Corners and Ms. Messner said yes, if someone complained.



Item 2, continued:

Councilmember Clark felt there will be more requests for these types of venues in the downtown area so Council needs to be mindful of that impact to future residential development. Councilmember Hickman agreed and said having multiple music venues along Main Street would negatively impact everyone and the current noise permit provides a 500 foot buffer, which should remain in place for any music venue. Councilmember Clark asked if noise permits are first come first serve and Captain Lehenbauer said basically yes. Councilmember Clark asked if a Special Event Permit supersedes the noise ordinance and Ms. Messner said no, but the City only enforces the noise ordinance if there is a complaint.

Mayor Miller said this discussion is trying to address an ongoing venue and that is the problem because when there is a special event, everyone knows what to expect and no one complains because they are aware it is temporary, not ongoing. Councilmember Allison said the City is basically discussing this because of one applicant and changing the ordinance for one applicant will cause issues. Councilmember Clark said the Committee is discussing this subject because Council perceives more people wanting to do this because of the way the downtown area will be developing. She said Council would have created a slippery slope if they had granted this application without looking at the process as a whole so the process needs to be clarified or the City will be dealing with these types of requests time and again.

Chairman Holman said everyone seems to generally support allowing outdoor music, but the City cannot allow any venue to have live entertainment on a continual basis. He felt that seven times a year for a noise permit was appropriate and Councilmember Clark said she would not oppose a once a month permit.

Councilmember Hickman asked what the standards are on whether or not a Special Use Permit should be granted and Ms. Messner said there is a paragraph in the Zoning Ordinance that talks about special uses, which are typically allowed upon Council review if they meet certain conditions, e.g., time of day, days of the week, location, etc. Ms. Connors said that criteria also include compatibility, impacts, safety and convenience, etc.

Councilmember Hickman suggested allowing a Special Use for Outdoor Live Entertainment in C-2 and C-3. He said this gives Council the flexibility to approve or deny the request on a case by case basis based on the criteria for granting a Special Use Permit. Ms. Joy Hampton, The Norman Transcript, said it sounds as if the Committee is talking about doing something opposite of what is being recommended by Staff. If someone requested a Special Use for Outdoor Live Entertainment, what would give Council the right to say no without being arbitrary and capricious? Councilmember Hickman said he asked about the standards for granting a Special Use Permit because Council can use that zoning criteria if someone applied for an outdoor music venue especially in close proximity to a residential area. He said if that use would negatively impact homes or businesses, Council could comfortably deny the request. He is just throwing that idea out for discussion because otherwise the City will be limiting itself on allowing outdoor music venues. Councilmember Allison said Norman needs to have regulations that allow outdoor live entertainment venues to grow with the City.

Ms. Marian Nunez, owner of Opolis Productions located at 113 North Crawford, said it is important to have flexibility for incoming businesses, but as Norman grows, more areas are going to develop residentially as well. She felt the concentration of residential and business would bring more restrictions as time goes on. She said the Police Department has not had anyone request more than seven noise permits per year and wondered how that would be monitored if the ordinance allowed 12 to 24 permits per year.

Mr. Andrew Harroz, representative for Puebla located at 305 East Main Street, said having a definition for an outdoor music venue is smart and he would like to see more than seven noise permits per year allowed. He said the Police Department can monitor how many permits are being applied for at one time, enforce the buffer zone, and issue or deny an application on a case by case basis. The reason Puebla applied for a Special Use Permit was because they felt that seven noise permits per year was very limiting and they would like to see that limit raised to 24; however, if Puebla needs to apply for a PUD then that is fine as well. He is excited at the prospect of being at the forefront of discussion on allowing outdoor live music venues in the City of Norman.

Item 2, continued:

Ms. Hampton asked if notification to surrounding property owners is given when a noise permit is issued and Captain Lehenbauer said no. Councilmember Hickman felt there should be notification to property owners when a noise permit application is received by the City. Mr. Steve Lewis, City Manager, said when notice letters are sent out to the public it is advising citizens of a public hearing where comments in support of or against an item can be made and that could be the presumption here if notices are sent regarding noise permits. Councilmember Karjala said notification is a simple practice that needs to take place.

Councilmember Hickman said an integral part of this discussion is noise and suggested this discussion be carried over into another meeting with a representative from the Police Department detailing the noise permit process. He said this needs to be an integrated solution, not just a zoning solution.

Councilmember Clark asked about the regulations for the Oklahoma City Zoo Amphitheatre because it is surrounded by residential neighborhoods and Ms. Messner said Staff will research other cities' noise permit process as well as zoning ordinances that allow outdoor entertainment to be presented at the next meeting. Councilmember Hickman suggested the City Clerk present information on the requirements for issuing Special Event Permits as well so Council can understand how these pieces all fit together because they do impact each other.

As clarification for Staff, Committee members asked for the following information to be presented at the next meeting:

- How are noise permits implemented and tracked
- How would outdoor music venues impact current and future residents in Downtown Norman
- How and when do noise levels supersede City ordinances, e.g. stadiums
- How can noise permits integrate with the zoning ordinance
- How can Special Event permits integrate with noise permits and zoning ordinance

Councilmember Karjala said Staff mentioned an Arts and Entertainment District as an overlay and asked how that would work. Ms. Connors said it would be an overlay to current zoning in which criteria would be created so anyone within the district would have to conform to that criteria in order to operate certain venues.

Ms. Connors said Staff did not find any City that allowed outdoor live entertainment on a continuing basis. Mayor Miller said during special events, such as the Norman Music Festival, people have expectations for what things are going to happen and they know it is temporary. She said Norman already has ways to provide for outdoor live music venues and she does not think Norman wants to allow a carte blanche permit for outdoor live music.

Councilmember Allison suggested allowing 12 noise permits per year with a clause that could allow additional permits depending on the circumstances for that request. The City needs to figure out a way to allow outdoor live entertainment to happen throughout Norman, not just in the downtown area because events take place in the parks and other areas of Norman. Ms. Messner said there is a clause in the noise ordinance that allows additional noise permits through an appeal to City Council.

Chairman Holman suggested this discussion be continued on Thursday, December 1st, since the next regularly scheduled CPTC meeting falls on Thanksgiving Day.

Item 2, continued:

Items submitted for the record

1. Memorandum dated October 21, 2016, from Susan Connors, Director of Planning and Community Development, to the Community Transportation and Planning Committee, with Exhibit A, Noise Level Chart; Exhibit B, Columbia, Missouri, Code of Ordinances, Article III – Noise; Exhibit C, City of Denton Noise and Odors Ordinance; Exhibit D, Manhattan, Kansas, Code of Ordinances, Article V – Offenses Against Public Peace; Exhibit E, Minnapolismn.gov – Sound Permit (Outdoor Amplified Sound Permit); Exhibit F, Austin, Texas, Code of Ordinances, Chapter 9-2. Noise and Amplified Sound; Exhibit G, City of Hastings, Minnesota, City Council Memorandum dated May 3, 2011, and Ordinance No. 2011 – an Ordinance of the City of Hastings Regulation Public Nuisances Affecting Peace and Safety; and Norman, Oklahoma, Code of Ordinances, Article III – Noise Control
2. Noise Variance Permit

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The meeting adjourned at 6:06 p.m.

ATTEST:

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City Clerk

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Mayor



November 23, 2016

Memorandum from Planning and Community  
Development Director to CPT Committee

Possible changes – Live Entertainment Venue





**TO:** Community Planning and Transportation Committee Members

**FROM:** Susan Connors, AICP, Director of Planning and Community Development

**DATE:** November 23, 2016

**RE:** Discussion of Special Use for Live Entertainment - Indoor vs. Outdoor

### **BACKGROUND**

At the October 27<sup>th</sup> Community Planning and Transportation Committee (CPT) meeting, Staff presented research on various processes cities maintain for controlling or permitting outdoor live entertainment venues. This research was done in order to discuss possible changes to existing requirements for outdoor live entertainment and the possible impacts of outdoor live entertainment in the downtown area along Main Street. At that meeting, Committee Members discussed the information presented and continued the discussion to the December 1 CPT meeting and directed staff to continue the analysis of Noise Variance Permits and Outdoor Live Entertainment as a Special Use.

### **DISCUSSION**

The information requested by the Committee members is discussed below, particularly regarding how the City of Norman processes Noise Variance Permits and associated Special Event Permits, which may involve outdoor live entertainment.

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

The Norman Police Department (P.D.) 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 from this limitation due to the variety of events held by different groups or sponsors. The applicant must comply with the timing requirements of the noise variance: no 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 P.D. receives two 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 applications are submitted simultaneously, P.D. will approve the most compliant application with the noise variance regulations. Attached as **Exhibit A**, is the log of Noise Variance Permits from the last three years.

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

Currently, there is not a policy in place to notify adjacent property owners of a Noise Variance Permit approved by P.D. 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.

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

As discussed at the October 27<sup>th</sup> CPT meeting, all Special Use Permits for Live Entertainment issued to date have been for indoor use. The Zoning Code is silent on outdoor vs. indoor live entertainment, therefore, City Council is the body which will determine allowing the use outdoors. All events which have had live entertainment outdoors up to this point all have been controlled by obtaining Noise Variance Permits or Special Event Permits.

Per Article XXVII – Special Events, Section 13-2702 –Definitions. a Special Event Permit is defined as:

(a) Special event means 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 one thousand (1,000) or more people at any time during the event.

(b) Special event area or site means any outdoor place which will be maintained, used, or operated for a special event.

(c) Operator means an individual, group of individuals, association, partnership, corporation, firm, company, or property owner who intends to hold or sponsor a special event, but shall not include the City of Norman.

The regulations in (a) above determine if someone is required to apply for a Special Event Permit. Attached, as **Exhibit B**, is a list of Special Event Permits for the last three years. In comparing the numbers of permits on Exhibit A to those on Exhibit B, there are many more Noise Variance Permits issued than Special Event Permits.

As to how a special use permit, a noise variance permit, and a special event permit work together, they should work together. First, a noise

variance is required as part of an application for a special event if the special event volume will violate the noise ordinance. For example, Norman Music Festival applies for both a special event permit and a noise variance permit. Second, were Council 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 & Entertainment District” with an increase in the number (more than 7) of Noise Variance Permits annually and with option to appeal to City Council for additional permits? How would the overlay district operate?**

Establishing an “Art & Entertainment District” in the Downtown Area, along Main Street, is an option for helping to control/monitor indoor as well as outdoor live entertainment venues. 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 City Council and most likely also apply for a Noise Variance Permit

One of the cities staff previously reviewed, Manhattan, Kansas, population 56,143, has an area/overlay district designated as “Aggieville Business Improvement District.” Within Aggieville there are restaurants, bars, theatres, retail, a hotel and a few residential uses above some of the businesses. Mixed within these uses are indoor and outdoor live entertainment uses. This area is in close proximity to Kansas State University. The recent redevelopment of this area is shown on the attached photographs and map as **Exhibit C**. Noise Variance Permits are not required within this District.

In another city, Denton, Texas, population 123,099, they have an area around the Town Square that has recently seen a marked increase in “beer gardens.” These beer garden areas have indoor and outdoor live entertainment uses and 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. The City of Denton does not have an ordinance on the books that regulates live entertainment, i.e., if the zoning is appropriate for the bar or restaurant use then the Zoning Ordinance does not regulate the live entertainment element. Their issue is the live entertainment is violating the Noise Ordinance, so they are busy citing those in violation.

In the City of Oklahoma City outdoor live entertainment is not regulated, similar to Denton, Texas. 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. Oklahoma City allows three (3) Noise Permits annually per site and for the most part all facilities that offer outdoor live entertainment close by 11 o'clock and are ticketed only on a complaint driven basis.

#### **How would music downtown impact residences?**

There are approximately a dozen existing residential units in the downtown area. There is another site in the downtown area that was recently zoned for possibly 4 residential units. All of these units are on the second floor, above existing retail areas. For residents in the downtown areas they are aware they live in a commercial district and over the years there have been parties and special events along Main Street. Allowing live entertainment along Main Street doesn't seem too out of character for a commercially concentrated area.

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. OU and high schools?**

Sporting/public events at Norman Public Schools and the University of Oklahoma are exempt from the Noise Ordinance.

#### **How would an overlay district work in downtown?**

An overlay district would be the same as any ordinance currently adopted in the Zoning Ordinance. The area would be defined, regulations 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. 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?**

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

#### **Should we allow more than seven (7) noise variances per year?**

We did not find any cities in our research that allowed more than 7 permits per year, if they required a permit. As noted above, Oklahoma City allows only 3 Noise Variance Permits annually. 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. We found one reported instance in Oklahoma City where there were so many complaints at one location that a city staff member indicated that no additional noise permits would be issued to that business address. However, that was a unique situation.

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

The current regulations and definitions of “Live Entertainment” in the Zoning Ordinance require that City Council approve a Special Use Permit for Outdoor Live Entertainment where it is an allowed Special Use in a zoning district.

Approving Special Use Permit applications for Outdoor Live Entertainment on a case-by-case basis is an option for Council. 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?**

Restaurants may have Indoor Live Entertainment as an allowed use in the C-1, C-2 and C-3 Districts. 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. That Zoning Code amendment did not specify indoor or outdoor use, however, night clubs and dance halls 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 zoned districts are adjacent to residential, whereas C-3 Districts are typically buffered on the edges by C-2 before reaching the residential districts.

**Should City raise the decibel limit on noise variances?**

The decibel level chart, **Exhibit D**, demonstrates the level of decibels for a music venue, far over the limit set on the Noise Ordinance at an average of 80 dlb. 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 PUDs so Council can control locations and requirements?**

Limiting live entertainment to areas designated as a Planned Unit Development (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. 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 PUD.

In review, staff has not found a seamless arrangement. There is always the possibility of issues for a portion of the population. 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?**

Not all events require a Special Event Permit and/or a Noise Variance Permit. If an event lasts two (2) or more hours, is open to the public, and is reasonably expected to attract one thousand (1,000) or more people at any time during the event then a Special Event Permit is required. Special Event Permits and Noise Variance Permits are not always required together. There are many instances where a Noise Variance Permit 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.

**How does OKC handle the Zoo Amphitheatre live entertainment events?**

The Zoo Amphitheater was established in early 1930 and operates as an exempt facility. The concerts typically end at 11 o'clock and there is no Special Event or Noise Permit required for the site.

**RECOMMENDATIONS**

After review of the previous research submitted to the Committee, staff has found that 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. If a city relies on a noise ordinance to regulate outdoor live entertainment then it is usually on a complaint basis. 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.

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

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 we did not find cities that issue more.

As discussed at the October 27<sup>th</sup> CPT meeting the main issues the Committee is addressing is to establish a clear definition between "Indoor vs. Outdoor Live Entertainment Venue", and to decide 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.

Recommended Zoning Ordinance definition amendments:

(2) ACCESSORY. A use, building, structure, part of a building, or part of a structure which is subordinate to, and the use of which is incidental to, that of the main building, structure, or use on the same lot, including a private garage. If a building otherwise qualified as an accessory building is attached to the main building by a common wall or roof, such building shall be considered a part of the main building. Accessory buildings include, but are not limited to, barns, sheds, guest houses without cooking, private garages, and servant's quarters. Accessory uses include customary house occupations, the keeping of pets, off-street parking and loading facilities. 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. Uses accessory to apartment houses include prepackaged food and toiletries stores, subject to the provisions of Section 421.1.3(d) of this Code.

\* \* \*

(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 this category and all activities are located within a fully enclosed building. This

category shall not include, in any manner, any Adult Entertainment Establishment.

\* \* \*

(84.5) MUSIC VENUE (OUTDOOR). 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.

## **CONCLUSION**

The following are the main suggestions, based on our research:

1. 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 Permit from the Norman Police Department has been issued to allow for the amplified live music outdoors.
2. Establish an Arts and Entertainment Overlay District with regulations to address the opportunities for amplified/live music.

December 1, 2016

CPT Minutes  
Definition of Live Entertainment in  
Zoning Ordinance



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 6<sup>th</sup> and 7<sup>th</sup>. 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 12<sup>th</sup> Avenue NW and 24<sup>th</sup> Avenue NE and southeast Norman, south of Highway 9 to Cedar Lane between 12<sup>th</sup> Avenue NE and 24<sup>th</sup> 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 1<sup>st</sup> 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 27<sup>th</sup> 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

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The meeting adjourned at 5:20 p.m.

ATTEST:

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City Clerk

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Mayor



December 13, 2016

City Council Minutes  
Puebla postponed indefinitely



Item 36, being:

CONSIDERATION OF ORDINANCE O-1617-3 UPON SECOND AND FINAL READING: AN ORDINANCE OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AMENDING SECTION 460 OF CHAPTER 22 OF THE CODE OF THE CITY OF NORMAN SO AS TO GRANT SPECIAL USE FOR A LIVE ENTERTAINMENT VENUE (OUTDOORS) IN THE C-3, INTENSIVE COMMERCIAL DISTRICT FOR LOT THREE (3), BLOCK TWENTY-TWO (22), NORMAN ORIGINAL TOWN, CLEVELAND COUNTY, OKLAHOMA; AND PROVIDING FOR THE SEVERABILITY THEREOF. (305 EAST MAIN STREET)

Ordinance O-1617-3 having been Introduced and adopted upon First Reading by title in City Council's meeting of September, 13, 2016, and Councilmember Hickman having moved that Ordinance O-1617-3 be adopted upon Second Reading section by section in City Council's meeting of September 27, 2016, which motion having been duly seconded by Councilmember Chappel, Ordinance O-1617-3 was tabled on September 27, 2016, and sent to the City Council Community Planning and Transportation Committee to return at the next City Council meeting following a recommendation from the City Council Community Planning and Transportation Committee;

Items submitted for the record

1. Text File O-1617-3 dated July 26, 2016, by Jane Hudson, Principal Planner
2. Ordinance O-1617-3
3. Location map
4. Staff Report dated August 11, 2016, recommending approval
5. Predevelopment Summary Case PD 16-11 dated July 28, 2016, for El Chapo, L.L.C., d/b/a Puebla Tacos y Tequileria located at 305 East Main Street
6. Pertinent excerpts from Planning Commission minutes of August 11, 2016
7. Protest map dated September 19, 2016, containing 33.7% protest within subject tract
8. Letter of protest filed received August 5, 2016, from Andy and Marian Nunez, OPOLIS Productions, Inc., to City of Norman Planning Commission
9. Norman Code of Ordinances, Chapter 22 Section 425.1, C-3, Intensive Commercial District
10. Letter of protest received September 19, 2016, from Andy and Marian Nunez, OPOLIS Productions, L.L.C., to Neighbor
11. Petition of protest received September 19, 2016, containing 7 signatures
12. Letter received September 22, 2016, from Andy and Marian Nunez, OPOLIS Productions, L.L.C., to City Council
13. Photographs of alley between OPOLIS and Puebla
14. Explanation received September 22, 2016, referring to staff note revisions following the Planning Commission meeting

Participants in discussion

1. Ms. Susan Connors, Director of Planning and Community Development
2. Mr. Andrew Harroz, Mulinex Edwards Rosell & Goerke, 3030 Oklahoma Tower, 210 Park Avenue, Oklahoma City, attorney representing the applicant
3. Mr. Jeff Bryant, City Attorney

Thereupon, Councilmember Holman moved that Ordinance O-1617-3 be postponed indefinitely, which motion was duly seconded by Councilmember Heiple;

Participants in discussion

1. Mr. Steve Ellis, 633 Reed Avenue, proponent
2. Ms. Marian Nunez, 1600 North Porter Avenue, asked questions
3. Mr. Jeff Bryant, City Attorney
4. Mr. Andrew Harroz, Mulinex Edwards Rosell & Goerke, 3030 Oklahoma Tower, 210 Park Avenue, Oklahoma City, attorney representing the applicant

and the question being upon postponing Ordinance O-1617-3 indefinitely, a vote was taken with the following result:

YEAS:

Councilmembers Allison, Castleberry,  
Chappel, Heiple, Holman, Karjala,  
Mayor Miller

NAYES:

Councilmembers Clark and Hickman

The Mayor declared the motion carried and Ordinance O-1617-3 was postponed indefinitely.

\* \* \* \* \*

February 8, 2018

Staff Report. Planning Commission  
Hollywood Corners request for  
Live outdoor entertainment



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ORDINANCE NO. O-1718-31

ITEM NO. 10b

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**STAFF REPORT**

**GENERAL INFORMATION**

APPLICANT	Hollywood Corners Stations, L.L.C.
REQUESTED ACTION	Rezoning to SPUD, Simple Planned Unit Development
EXISTING ZONING	A-2, Rural Agricultural District
SURROUNDING ZONING	North: TC, Tourist Commercial District East: A-2, Rural Agricultural District South: A-2, Rural Agricultural District West: A-2, Rural Agricultural District
LOCATION	SW corner of Porter Avenue and Franklin Road
SIZE	2.38 acres, more or less
PURPOSE	Rezoning to allow for Outdoor Live Entertainment Venue and Bar, Nightclub or Tavern
EXISTING LAND USE	Convenience Store/Restaurant
SURROUNDING LAND USE	North: Residential, Commercial & Industrial East: Vacant & Residential South: Vacant & Residential West: Vacant & Residential
LAND USE PLAN DESIGNATION	Very Low Density Residential Designation

**SYNOPSIS:** In the companion land use amendment the applicant is requesting to amend the NORMAN 2025 Land Use and Transportation Plan from Very Low Density Residential Designation to Commercial Designation (R-1718-25). This application requests rezoning the property from A-2, Rural Agricultural District to SPUD, Simple Planned Unit Development with the approved uses consistent with those listed as allowed uses by right and Special Use under the TC, Tourist Commercial District; these uses are more specifically detailed in the SPUD. The references to the TC District are proposed for two reasons: TC zoning exists directly north, across Franklin Road. In 1983, a tract of land across Franklin Road, to the north of Hollywood



Corners, was rezoned from A-2, Rural Agricultural District to TC, Tourist Commercial with Permissive Use for an Auto Sales business. The site is now utilized as a construction yard/office for a concrete contractor. The NORMAN 2020 Land Use and Transportation Plan reflected the property on the north side of Franklin Road as Very Low Density Residential. At the adoption of the NORMAN 2025 Land Use and Transportation Plan the land use designation on the same site was amended to reflect the existing use that, of Commercial, as now reflected on the NORMAN 2025 Land Use and Transportation Plan. The second reason for proposing uses from the TC District is because it is the zoning district designated in the Zoning Ordinance as the district intended to accommodate the grouping of those commercial activities necessary to supply the normal needs of tourists, and to protect against other incompatible commercial uses; i.e., those uses in the C-1, C-2 and C-3 Districts.

**ANALYSIS/DISCUSSION** This property developed prior to annexation and has been a variety of businesses since its beginning 90 plus years ago (since 1925). In reviewing several land surveys, businesses on this site have varied from a café and travel court with areas for trailers and what appears to be dwelling units, to the convenience store/deli and gas station still in operation.

The recent permits for the site are as follows: A permit was issued in 2014 for the property to be remodeled and reopened as a new deli and convenience store, as a grandfathered land use on the site, with no expansion of the structure except for an outdoor patio on the west side of the building and reconfiguration of an ADA accessible ramp on the south side of the building. In 2015 a permit was issued for the area identified as the stage, located on the south edge of the property. The permit was issued as a TCTL – Temporary Construction Trailer because the structure was to be used for a private benefit concert at the site. In 2016 a permit was issued for a roof/covering over the stage. Though the stage has been used for outdoor live entertainment the applicant could have received a permit for an accessory structure and covered the structure, as was done – it is not the stage structure that is at issue for zoning; it is the use of the structure/site that is at issue. Realistically, the property could continue as a convenience store/restaurant and the stage area located on the south edge of the property could be used for seating of guests eating lunch or dinner at the site. In 2016 a permit was issued for a small storage building located just north of the existing restaurant building.

The rezoning to SPUD, Simple Planned Unit Development, seeks to mimic the TC, Tourist Commercial regulations as much as possible. In the Zoning Ordinance (Z.O.) under the TC, Tourist Commercial District a restaurant is an allowed use. Per the Z.O., a restaurant can provide live entertainment and/or a dance floor to their guests as long as all such activity is located inside an enclosed building, provided that the kitchen remains open with full food service whenever live entertainment is offered. If Hollywood Corners kept the restaurant use, and provided their guests live entertainment inside the building, they would be complying with the TC Zoning regulations. A Special Use request to allow a Nightclub or Tavern with Live Entertainment would also allow the indoor live entertainment and serving of alcohol. What requires Hollywood Corners to request the SPUD is the fact that they want an outdoor live entertainment venue on the stage area or possibly the back-patio area; and as part of the SPUD they are requesting to be a Bar. They are combining their requests into one zoning request to a SPUD.

With regard to the request for Outdoor Live Entertainment Venue, the applicant is requesting a use not historically approved within the city limits through a zoning request – that of outdoor live entertainment. The site is already considered to be a legally nonconforming restaurant and under the restaurant the business has the licensing to serve alcohol, not just beer. The

request to allow for a Nightclub or Tavern with Live Entertainment will simply eliminate the requirement to have 51% of their sales from food at the business. If the request is approved, the business would no longer be required to have the kitchen open, serving a full menu, to serve liquor and have an indoor live entertainment venue.

### **BACKGROUND**

Live Entertainment is discussed in the Zoning Ordinance as follows:

Live Entertainment Venue is defined 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 or cover charge to observe that entertainment. Night clubs, bars and dance halls are typical uses within this category. This category shall not include, in any manner, any Adult Entertainment Establishment".

Hollywood Corners does not charge an additional fee/cover charge for the live entertainment venues.

Live entertainment is also discussed as follows under the definition of Accessory:

Accessory. ".....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".

The definitions of Live Entertainment came from Bar/Dance Hall; historically all activities took place within a fully enclosed facility/business. The interpretation from City staff has been that live entertainment, as defined as an accessory use with a restaurant, dance hall or bar, is done within a fully enclosed building. Per City Council discussion at the December 13, 2016 meeting, the intent of allowing live entertainment is that it is to be an indoor use on a site.

A business owner can also request a Noise Variance Permit per Article III – Noise Control.

A noise variance permit and a special event permit can work together; a noise variance is required as part of an application for a special event if the special event volume will violate the Noise Ordinance. For example, Norman Music Festival applies for both a special event permit and a noise variance permit. If Council were to approve a Special Use Permit for outdoor live entertainment, the business with the special use permit would still need a noise variance permit if the noise level will exceed the noise ordinance. The maximum number of allowed Noise Permits per year is 7, unless additional permits are approved by the City Manager.

In addition to the above discussion there is the issue of Article III – Noise Control. The Zoning Ordinance does not address issues of sound and a zone change request for SPUD does not give Planning staff the ability to vary a standard in a different section of the Municipal Code.

The application for rezoning from A-2 to SPUD is an appropriate request for this site since the use of the gas station and convenience store/deli has been allowed in the past and grandfathered and those uses do fit within the allowed uses in the TC District, TC being the referenced zoning district in the SPUD. To allow for the request of a bar with live entertainment as historically interpreted from the Zoning Ordinance – all such activity fully within an enclosed building - may be appropriate as well since they already serve alcohol under the current use of a restaurant. Conversely, to allow the addition of outdoor live entertainment in this area may not be an appropriate fit for the area unless additional restrictions are attached to the

use of the site and those restrictions are strictly followed by the applicant. There have been numerous complaints from nearby residents about the attendance numbers and sound level resulting from outdoor concerts. The applicant has indicated they will provide sound barrier equipment and are proposing to follow Article III – Noise Control as outlined in the SPUD Narrative.

#### **ALTERNATIVES/ISSUES:**

##### **The particulars of this SPUD:**

- **USES** In regard to the Outdoor Live Entertainment Venue on the property, the following provisions shall apply when exterior amplification of sound is utilized:
  - Live exterior amplified music events shall be restricted to meet the standards shown on Exhibit B.
  - The performance stage will be enhanced with sound barriers along the rear and sides of the stage such that amplified sound shall be directed to the northeast direction of the stage and shall be diminished from the rear and sides of the stage.
- **IMPACTS** Impacts of attendance numbers, sound levels and parking have already been an issue in this general area – there are multiple complaints from neighboring property owners and through the SPUD the applicant is proposing measures to alleviate these concerns/issues.
- **ACCESS** The access for the property will be by way of the existing access points along Porter Avenue. There are no other points of access requested from Franklin Road and none recommended for approval.
- **SITE PLAN** With the exception of sound barrier materials there are no additions/expansions proposed on the site. The owners/applicants placed a large amount of gravel on-site to help accommodate parking. Through the SPUD Narrative the applicant is requesting approval of the existing parking surface for patron parking.
- **PARKING SOLUTION** – There have been complaints regarding the parking situation for this site when there are larger events scheduled. With 57 parking spaces on the site there is adequate parking for the existing convenience store, deli/restaurant and for smaller venue shows but for the larger shows parking shortage is an issue. The owner has indicated that they have an arrangement for temporary parking facilities across Franklin Road, to the northeast. However, staff does not have documentation from the owner to confirm this arrangement.

#### **OTHER AGENCY COMMENTS:**

- **GREENBELT COMMISSION – GBC NO. 17-12** **MEETING MAY 15, 2017**  
There was no Greenbelt meeting required for this application.
- **PRE-DEVELOPMENT – PD NO. 17-29** **MEETING DECEMBER 21, 2017**

#### **Application Summary**



The applicant, Hollywood Corners Station, L.L.C., is proposing a NORMAN 2025 Land Use and Transportation Plan amendment from Very Low Density Residential to Commercial and rezoning from A-2, Rural Agricultural District to Simple Planned Unit Development, SPUD to allow for commercial uses on the property. The applicant is proposing the following: convenience store/fuel sales, deli/restaurant and bar with indoor/outdoor live entertainment venues.

#### **Neighbor's Comments/Concerns/Responses**

- Why does the music have to be so loud? The site is small, you can still hear the music even if you turned it down to not impact the neighbors.
- We, as neighbors, don't want you to close; we don't want the business to go away. We just want the music level, bass, to be turned down so it isn't such an impact on adjacent properties. One neighbor stated they could hear the words with windows closed and A/C unit running.
- Our property values have decreased and will continue to decrease if the music volume isn't controlled.
- The decibel of sound should be no louder than 50 after 9 p.m.
- The Noise Ordinance is in place for a reason – quality of life is lost without control.
- We, as neighbors, want the entertainment but at a lower level.
- Have you thought about the type of sound board you will use to buffer the sound?
- Can you use "sound walls" to buffer the music?
- Have you hired a sound engineer?
- Are you planning to extend hours of operation?
- What is the parking surface?
- Your parking area may work for the restaurant but not for the times when you have concerts.
- Blaine Nice – Neighbor's Legal Counsel – requested a copy of the SPUD Narrative when completed.

#### **Applicant's Response**

- Applicant's representative stated the business model will follow the TC, Tourist Commercial District, Special Use – Convenience Store, Deli/Restaurant, Bar and Live Entertainment Venue. Rieger Law Group has conducted sound studies. The parking surface is gravel. We do not intend to extend the business hours. Currently, looking at sound walls, buffering solutions for the site. They will work toward a solution that will not negatively impact the neighbors yet allow Hollywood Corners the opportunity to provide a venue to local artists and the community.

- **PARK BOARD** This property is not platting with a residential component; therefore, there are no park dedications required.
- **PUBLIC WORKS** The property is not platting. Per Section 19-103-104 of the Subdivision Regulations platting is not required for this site.

#### **STAFF RECOMMENDATION**

Staff presents this item to Planning Commission for their consideration with the following recommendations:

- Staff recommends approval of the request for SPUD, Simple Planned Unit Development for the Bar, Lounge or Tavern.

- Staff recommends approval of Live Entertainment Venue as historically interpreted for indoor use only; staff cannot recommend approval of a use not identified in the Zoning Ordinance.
-

June 12, 2018

City Council Minutes  
Approval for live outdoor entertainment  
Hollywood Corners



Item 27, being:

CONSIDERATION OF ORDINANCE O-1718-31 UPON SECOND AND FINAL READING: AN ORDINANCE OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AMENDING SECTION 460 OF CHAPTER 22 OF THE CODE OF THE CITY OF NORMAN SO AS TO REMOVE PART OF THE NORTHEAST QUARTER OF SECTION SEVEN (7), TOWNSHIP NINE (9) NORTH, RANGE TWO (2) WEST OF THE INDIAN MERIDIAN, NORMAN, CLEVELAND COUNTY, OKLAHOMA, FROM THE A-2, RURAL AGRICULTURAL DISTRICT AND PLACE THE SAME IN THE SPUD, SIMPLE PLANNED UNIT DEVELOPMENT DISTRICT, OF SAID CITY; AND PROVIDING FOR THE SEVERABILITY THEREOF. (4712 NORTH PORTER AVENUE)

Ordinance O-1718-31 having been Introduced and adopted upon First Reading by title in City Council's meeting of May 22, 2018, Councilmember Castleberry moved that Ordinance O-1718-31 be adopted upon Second Reading section by section, which motion was duly seconded by Councilmember Wilson;

Items submitted for the record

1. Text File O-1718-31 dated January 23, 2018, by Jane Hudson, Principal Planner
2. Ordinance O-1718-31
3. Location map
4. Simple Planned Unit Development (SPUD) Narrative dated January 8, 2018, prepared by Sean Paul Rieger, OBA #18817, Rieger Law Group, P.L.L.C. with Exhibit A, Proposed SPUD Site Development Plan; Exhibit B, Applicable excerpt from the City of Norman Noise Ordinance, Chapter 10, Health and Safety, Section 10-304, Use District Noise Levels; Exhibit C, Locations at which to measure sound readings for determination of decibel level and whether sound has exceeded the maximum permissible sound levels set forth in Exhibit B; and Exhibit D, Decibel Levels for typical noises
5. Planning Commission Staff Report dated February 8, 2018, recommending approval
6. Predevelopment Summary PD 17-29 dated December 21, 2017, from Hollywood Corners Station, L.L.C., for property located at 4712 North Porter Avenue
7. Pertinent excerpts from Planning Commission minutes of February 8, 2018
8. Protest map dated February 6, 2018, containing 26.6% protest within notification area
9. Letter of protest received February 5, 2018, from Randy L. and Lisa Martin
10. Letter of protest received February 5, 2018, from Josh and Miranda Kitchen
11. Letter of protest received February 5, 2018, from Kevin Barnes with attached photograph
12. Letter of protest filed February 5, 2018, from Rod Polston
13. Letter of protest filed February 2, 2018, from Donna Standerfer
14. Letters of protest filed February 2, 2018, and September 14, 2017, from Allan and Linda Austin
15. Letters of protest filed February 5, 2018, and September 11, 2017, from Brian Goodman and Suzi Newkumet
16. Letters of protest filed September 14, 2017, and February 2, 2018, from Raymond and Nancy Hartman
17. Letter of protest filed February 2, 2018, from Gaylon C. Hayes, Attorney at Law, Hayes Legal Group, P.C., on behalf of Mary Ellen Hickman
18. Email of support dated August 7, 2017, from Rick Fowble
19. Email of support dated August 9, 2017, from Rhonda Mayberry
20. Email of support dated August 9, 2017, from David Naehar
21. Email of support dated August 10, 2017, from Danna Fowble
22. Email of support dated August 16, 2017, from Beth Harrison
23. Email of support dated August 8, 2018, from Camille Mason
24. Facebook Comments of support
25. Letter of support received February 8, 2018, from Michael O'Donnell
26. Petitions to Support Outdoor Live Music at Hollywood Corners in Norman

Thereupon, Councilmember Wilson moved that Ordinance O-1718-31 be amended as follows:

III. DEVELOPMENT PLAN AND DESIGN CONCEPT

A. Commercial Uses

\* \* \*

e. Hours of Operation: Outdoor live entertainment events limited to April through November – Mondays from 6:00 p.m. to 10:00 p.m.; Wednesdays from 6:00 p.m. to 10:00 p.m.; Fridays from 7:00 p.m. to 11:30 p.m.; Saturdays from noon to 11:30 p.m., and two Sundays each month from noon to 9:00 p.m. Subject to revocation or amendment if more than three (3) violations of noise levels occur in a year.

Item 27, continued:

which motion was duly seconded by Councilmember Hickman;

Participants in discussion

1. Mr. Sean Rieger, 136 Thompson Drive, attorney representing the applicant
2. Mr. Jared Boyer, 1035 South Berry Road, HB Law Partners, attorneys representing property owners

and the question being upon amending Ordinance O-1718-31 as stated above, a vote was taken with the following vote:

YEAS: Councilmembers Allison, Bierman,  
Castleberry, Hickman, Holman, Karjala,  
Wilson, Mayor Miller

NAYES: Councilmember Clark

The Mayor declared the motion carried and Ordinance O-1718-31 was amended as stated above.

and the question being upon adopting Ordinance O-1718-31, as amended, upon Second Reading section by section, a vote was taken with the following result:

YEAS: Councilmembers Allison, Bierman,  
Castleberry, Hickman, Holman, Karjala,  
Wilson, Mayor Miller

NAYES: Councilmember Clark

The Mayor declared the motion carried and Ordinance O-1718-31, as amended, was adopted upon Second Reading section by section.

Thereupon, Councilmember Castleberry moved that Ordinance O-1718-31 be adopted, as amended, upon Final Reading as a whole, which motion was duly seconded by Councilmember Wilson; and the question being upon adopting Ordinance O-1718-31, as amended, upon Final Reading as a whole, a vote was taken with the following result:

YEAS: Councilmembers Allison, Bierman,  
Castleberry, Hickman, Holman, Karjala,  
Wilson, Mayor Miller

NAYES: Councilmember Clark

The Mayor declared the motion carried and Ordinance O-1718-31, as amended, was adopted upon Final Reading as a whole.

\* \* \* \* \*

Item 28, being:

CONSIDERATION OF ORDINANCE O-1718-46 UPON SECOND AND FINAL READING: AN ORDINANCE OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA AMENDING ARTICLE I, SECTION 13-108, ARTICLE XIII, SECTIONS 13-1301, 13-1302 AND 13-1303; ARTICLE XVIII, SECTIONS 13-1801, 13-1802, AND 13-1804; AND ARTICLE XXI, SECTIONS 13-2101, 13-2102, 13-2103, 13-2105, AND 13-2106, ALL IN CHAPTER 13 OF THE CODE OF THE CITY OF NORMAN, OKLAHOMA, CONCERNING LICENSURE AND OCCUPATIONAL TAX PERMITS FOR ESTABLISHMENTS SELLING ALCOHOLIC BEVERAGES AND CONSISTENCY WITH STATE LAWS AND REGULATIONS EFFECTIVE OCTOBER 1, 2018; AND PROVIDING FOR THE SEVERABILITY THEREOF.

Ordinance O-1718-46 having been Introduced and adopted upon First Reading by title in City Council's meeting of May 22, 2018, Councilmember Hickman moved that Ordinance O-1718-46 be adopted upon Second Reading section by section, which motion was duly seconded by Councilmember Castleberry;

Items submitted for the record

1. Text File O-1718-4631 dated May 1, 2018, by Brenda Hall, City Clerk
2. Ordinance O-1718-46
3. Legislatively annotated Ordinance O-1718-46




August 3, 2018

Memorandum from Legal to  
City Council Oversight Committee

Noise Ordinance





**Date:** August 3, 2018  
**To:** City Council Oversight Committee  
**From:** Jeanne Snider, Assistant City Attorney   
**Subject:** Noise Ordinance

### **BACKGROUND**

Noise produced by people has increasingly become a concern for communities. Noise is usually a local, not a statewide or national concern. Local governments may enact ordinances in an attempt to control noise produced by commercial or non-commercial activities. Commercial noise could be sounds emitted from a business in the normal operation of that business. These noises could range from loud music from a venue or banging of a construction site. As the population increases and expands, residential communities are developing further into areas formerly characterized as "rural" resulting in clashes between residential neighbors and other zoning uses, such as commercial or industrial.

City legal staff has been asked to review Chapter 10, Article III Noise Control ordinances in the City Code.

### **DISCUSSION**

#### ***Current Ordinance*** (Attachment 1)

The current ordinance generally defines prohibited acts, definitions or terminology and specific prohibitions against acts which include use or maintenance of items or activities. Maximum district noise levels are also included. There are limits on motor vehicle noise and exemptions for the emission of sound for the purpose of alerting persons to an emergency, emission of sound in the performance of emergency work and authorized testing for public safety equipment. Also exempted are organized school sponsored sporting events, public utilities, interstate railways and aircraft and allows for the issuance of a Noise Permit.

- Sec. 10-301 Declaration of policy
- Sec. 10-302 City of Norman contracts and purchases
- Sec. 10-303 Definitions and standards
- Sec. 10-304 Use district noise levels
- Sec. 10-305 Motor vehicle noise
- Sec. 10-306 Sound level measurement
- Sec. 10-307 Noises prohibited
  - a. General prohibitions
  - b. Specific prohibitions
    - 1. Horns and signaling devices

2. Radios, television sets, musical instruments and similar\*
3. Public loudspeakers\*
4. Hawkers and peddlers\*
5. Animals\*
6. Loading operation\*
7. Construction work
8. Domestic power equipment
9. Commercial power equipment
10. Enclosed place of public entertainment
11. Fireworks or explosives
12. Racing events\*
13. Powered model mechanical devices\*
14. Dynamic engine braking devices
15. Defect in vehicle\*
16. Refuse compacting vehicles
17. Garbage collection
18. Standing motor vehicles\*
19. Quite zones
20. Bells and chimes
21. Fixed siren, whistlers and horns\*
22. Vehicle, recreational vehicle, motorboat repairs, testing
23. Groups of gatherings of people\*
24. Emergency-type alarms

Sec. 10-308 Exemptions

- a. Emergencies
- b. Organized school sponsored sporting event
- c. Public utilities under authority of OCC
- d. Interstate railway locomotives and trains; aircraft
- e. Noise as a result of a Noise Permit

Sec. 10-309 Permit

Sec. 10-310 Reserved

Sec. 10-311 Terminology

Sec. 10-312 Penalties

Sec. 10-313 Additional remedies

*\*specifically mentions Sec. 10-304 or causes a noise disturbance*

*Loading operations, construction work, domestic and commercial power equipment, garbage collection and groups of gatherings of people all have adjustments that set specific days, times of day and maximum sound levels.*

### ***Decibel Sound Levels***

Noise standards are often measured in decibels, which is the unit that is generally employed to measure sound pressure. Our research revealed not all cities require the use of decibels to measure sound. The use of decibels does provide some scientific evidence as to the noise level apart from one person's sensory observation or personal impression. Sec. 10-304 designates use district noise levels. The chart in 10-304 separates use districts of residential, commercial and industrial. Agricultural zoning district is not addressed. The chart separates L90, L10, and L1.

The L90, L10 and L1 are statistical noise levels for the sound level equaled or exceeded x% of the sample time. For example, L90 is the level which was exceeded 90% of the time. Section 10-304 of the Norman Code uses L90 for the ambient sound level. Statistical noise levels are commonly used for environmental noise monitoring. These levels fluctuate over time. The time period for the Norman Code is a minimum of five minutes and a maximum of 15 minutes. From our research, Oklahoma City is the only other city we found that uses these measurements.

Attachment 2 is a list of allowed residential decibel levels compiled from cities throughout the country with similar populations to Norman.

### ***Noise Disturbance or Disturbing the Peace***

Sec. 10-304 also has a secondary measurement of "or cause a noise disturbance". A noise disturbance is defined in 10-311(m) as "any sound which annoys or disturbs reasonable persons with normal sensitivities, or which injures or endangers the comfort, repose, health, hearing, peace or safety of other persons."

Sec. 15-503(3) of the Norman Code states no person shall disturb the peace of another by "playing or creating loud or unusual sounds".

The "reasonableness" standard would be applied to these ordinances and may pass constitutional muster. In prosecuting these types of noise violations, it is important to present evidence to show the noise violated a reasonable person standard and have descriptive words to describe noise of a type or volume that a reasonable person would not tolerate under the circumstances.

Any person violating any provision of the Noise Control ordinance may be punished by a fine of not less than fifty dollars (\$50.00) nor more than seven hundred fifty dollars (\$750.00), or by imprisonment not to exceed sixty (60) days, or by both such fine and imprisonment. Each time such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

Persons convicted of violating the provisions of Chapter 15, Disturbing the Peace, may be punished by a monetary fine in an amount of not less than fifty dollars (\$50.00) nor



more than seven hundred fifty dollars (\$750.00), or by imprisonment for a period not to exceed sixty (60) days, or by both such fine and imprisonment.

### ***Enforcement***

The Norman Police Department purchased a hand-held sound level measuring device, the 3M SoundPro. The device makes it easy to document and analyze noise exposures. The SoundPro retrieves, downloads, shares and saves instrument data and creates charts, reports, tables and panels to interpret the measurements. When a noise complaint is received, a police officer can use this device to measure sound decibels and determine whether the applicable decibel levels are being exceeded. If the levels are being exceeded, the police office can issue a citation for violation of the noise ordinance. If the noise level does not exceed the decibel levels in the ordinance, but is disturbing the peace of the complaining party, the complaining party can sign a citation for a violation of Section 15-503, Disturbing the Peace.

Lt. Jeffrey Robertson will be present to discuss enforcement issues, the operation and training of the 3M SoundPro. A meeting is scheduled Monday, August 6, 2018, with the NPD, city legal staff and a representative from the Oklahoma Occupational Safety and Health Administration to discuss noise disturbances. Citizens may apply for a Noise Variance by completing a Permit application and submitting to the Norman Police Department. Seven permits per year per applicant may be approved. A copy of the Noise Variance Permit is attached. (Attachment 3).

### ***Other Oklahoma Cities***

Broken Arrow	Disturbing the peace, disorderly conduct includes time frames, but also establishes them as prima facie evidence; does not discuss decibels.
Edmond	Includes information scattered throughout ordinances without using decibels—very distinguishable from OKC or Norman.
Enid	General prohibition on “any loud, unnecessary, unusual or objectionable noise” disturbing the public or annoying inhabitants. Exemption provided for providing music “to the exclusive enjoyment of persons actually on the premises or within the place of business of such person” so long as not so loud to cause offense, annoy public, or disturb peace; however, no loud speakers allowed between 10:00 pm and 6:00 am.
Lawton	Similar to Norman but does not reference decibels, references prima facie evidence.
Moore	Similar to Norman; addresses sound production devices that are plainly audible between 10:00 pm and 7:00 am in a dwelling or

audible fifty feet from public property or right-of-way. Includes specific prohibitions on outdoor public address systems and unusual noises, music, or strong vibrations.

Oklahoma City	Similar to Norman with same decibel levels (except L <sup>1</sup> ) but more guidance regarding law enforcement.
Owasso	Addresses disturbing peace and quietude with “any contrivance” with an exception for religious bells; prohibits creating loud or unnecessary noises that is detrimental or disturbs peace of another between 11:00 pm and 7:00 am such to disturb a residence.
Stillwater	Noises prohibited generally; Public nuisances including loud/unusual noises; prohibits loud music with limits for day and night based on distance in residential areas and provides guidelines on bass.
Tulsa	Similar to Broken Arrow, includes quiet hours without discussing decibels.
Ft. Worth, TX	Updated in 2012. References decibel levels (but does not include L90, L10, L1); includes specific days/times for specific acts. (Attachment 4).

### ***Constitutional Considerations***

To avoid constitutional challenges, ordinances should be content-neutral both facially and as applied, be mindful of affecting property rights, and provide clear definitions of potentially vague terms.

Modifications to ordinances may implicate constitutional considerations under the First, Fifth, and Fourteenth Amendments. See Luis Inaraja Vera, *How Science Can Improve Regulation: Noise Control in Urban Areas*, 53 TULSA L. REV. 33 (2017), Paula B. Bentley, *A Line in the Sand: Florida Municipalities Struggle to Determine the Line Between Valid Noise Ordinances and Unconstitutional Restrictions*, 35 STETSON L. REV. 461 (2006).

Any ordinance affecting public speech must be content-neutral on its face and in its application and must withstand strict scrutiny, meaning the regulation must be narrowly tailored to serve a compelling state interest. *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015). Furthermore, regulations must not be overbroad by limiting “more speech than is necessary to achieve the goal of protecting citizens from excessive noise.” Bentley, *A Line in the Sand* at 475.

Dramatically altering permissible decibels or imposing greater restrictions on property usage also may trigger Fifth Amendment Takings considerations if the changed

regulation “sacrifice[s] all economically beneficial uses” of the property so as to diminish its value. Vera, *How Science Can Improve Regulation*, at 60-61. Ordinance modification also may implicate Due Process considerations if the language in the new ordinance is too vague. Bentley, *A Line in the Sand* at 478. Terms such as “unnecessary,” “annoying,” and “unusual” have been found to be vague. See *Coates v. Cincinnati*, 402 U.S. 611, 614 (1971) (“Conduct that annoys some people does not annoy others. Thus, the ordinance is vague . . . in the sense that no standard of conduct is specified at all.”), *Nichols v. Gulfport*, 589 So. 2d 1280, 1282 (Miss. 1991) (finding terms “unnecessary” and “unusual” in municipal ordinance to be vague so that common person has to guess at its meaning).

### **CONCLUSION**

Most people believe in their right to quiet enjoyment of their surroundings, specifically in their home. Outdoor noise, and specifically outdoor live entertainment, are particular areas that can cause conflict between multiple land uses. The provisions of a noise ordinance should be tailored to meet the needs of a community.



# Attachment 1

ARTICLE III. - NOISE CONTROL<sup>[5]</sup>

Sec. 10-301. - Declaration of policy.

*Whereas*, the making and creation of excessive, unnecessary or unusually loud noises within the limits of Norman, Oklahoma is a condition which has existed for some time and the extent and magnitude of such noises is increasing; and

*Whereas*, the making, creation or maintenance of such excessive, unnecessary or unusually loud noises which are prolonged, unusual or unreasonable in their time, place and use affect and are a detriment to public health, comfort, convenience, safety and welfare of the residents of Norman, Oklahoma; and

*Therefore*, the necessity in the public interest for the provisions and prohibitions hereinafter contained and enacted is declared as a matter of public policy, and the provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare, and the peace and quiet of the inhabitants of Norman, Oklahoma.

(Ord. No. 0-7778-9)

Sec. 10-302. - City of Norman contracts and purchases.

- (a) *Compliance of City contractors and subcontractors.* It is the policy of the City of Norman to comply with the noise emission standards, as set forth in this chapter, in its own operations and the operations of its contractors and subcontractors shall be notified of and required to comply with the provisions of this article.
- (b) *City purchases.* It is the policy of the City of Norman to purchase only equipment which complies to the standards established for the same by this article.

(Ord. No. 0-7778-9)

Sec. 10-303. - Definitions and standards.

Terminology used in this article may be found in section 10-311, and if not defined therein shall be in conformance with applicable American National Standards Institute Publication, including but not limited to SI. 1-1960, R 1971, or those from its successor publications or bodies.

(Ord. No. 0-7778-9)

## Sec. 10-304. - Use district noise levels.

- (a) *Maximum permissible sound levels.* It shall be a violation of this article for any person to operate or permit to be operated any stationary source of sound which either:
- (1) Creates a sound level greater than 15dB(A) above the ambient sound level ( $L_{90}$ ) within any land use district during any measurement period; or
  - (2) Creates a ninetieth percentile sound level ( $L_{90}$ ), a tenth percentile sound level ( $L_{10}$ ) or a first percentile sound level ( $L_1$ ) for any measurement period which exceeds the limits set forth for the following receiving land use districts when measured at the boundary or at any point within the property affected by the noise:

	$L_{90}$		$L_{10}$		$L_1$	
Use District	9pm— 7am	7am— 9pm <i>10pm</i>	9pm— 7am	7am— 9pm	9pm— 7am	7am— 9pm
Residential	50dB(A)	55dB(A)	60dB(A)	65dB(A)	65dB(A)	70dB(A)
Commercial	55dB(A)	60dB(A)	65dB(A)	70dB(A)	70dB(A)	75dB(A)
Industrial	65dB(A)	70dB(A)	75dB(A)	80dB(A)	80dB(A)	85dB(A)

When a noise source can be identified and its noise measured in more than one land use category, the limits of the most restrictive use shall apply at the boundaries between different land use categories. For the purpose of enforcing these provisions a measurement period shall not be less than five (5) minutes nor more than fifteen (15) minutes.

- (b) *Correction for character of sound.*

- (1) For any stationary source of sound which emits a pure tone, cyclically varying sound or repetitive impulsive sound, the limits set forth in subsection (a) above shall be reduced by 5 dB(A).



- (2) Notwithstanding compliance with part (1) of this subsection, it shall be a violation of this ordinance for any person to operate or permit to be operated any stationary source of sound which emits a pure tone, cyclically varying or repetitive impulsive sound which creates a noise disturbance.

(Ord. No. 0-7778-9; Ord. No. 0-8081-5; Ord. No. 0-8283-110)

Sec. 10-305. - Motor vehicle noise.

- (a) No person shall drive or move or cause or knowingly permit to be driven or moved a motor vehicle or combination of vehicles at any time in such a manner as to exceed the following noise limits for the category of motor vehicle shown below. The standard measurement height shall be five (5) feet (1.5 meters) and the measurement distance no less than twenty-five (25) feet (7.5m). The distance shall be measured from the near side of the nearest monitored traffic lane to the microphone.

	Sound Level, dB(A)
Motor vehicles with a manufacturers gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR) of ten thousand (10,000) pounds or more, or any combination of vehicles towed by such motor vehicle .....	88
Motorcycles .....	78
Any other motor vehicle or any combination of vehicles towed by any motor vehicle .....	78

- (b) This section shall apply to the total noise from a vehicle or combination of vehicles and shall not be construed as limiting or precluding the enforcement of any other provisions of this title relating to motor vehicle mufflers for noise control.

(c) No person shall operate or cause to be operated any motor vehicle unless the exhaust system of such vehicle is:

- (1) Free from defects which affect sound reduction;
- (2) Equipped with a muffler or other noise dissipative device; and
- (3) Not equipped with any cut-out, by-pass or similar device.

(Ord. No. 0-7778-9; Ord. No. 0-0304-56, § 1)

Sec. 10-306. - Sound level measurement.

Sound level measurements shall be made with a sound level meter Type II or better using the "A" weight scale, in accordance and conforming with the standards promulgated by the American National Standards Institute.

(Ord. No. 0-7778-9)

Sec. 10-307. - Noises prohibited.

(a) *General prohibitions:* In addition to the specific prohibitions outlined in subsection (b) and sections 10-304 and 10-312 below of this article, it shall be unlawful for any person to make, continue, or cause to be made or continued any noise disturbance within the limits of Norman.

(b) *Specific prohibitions:* The following acts are declared to be in violation of this article:

(1) *Horns and signaling devices.* Sounding of any horn or signaling device on any truck, automobile, motorcycle, emergency vehicle or other vehicle on any street or public place therein except as a danger warning signal as provided in the vehicle code of the State of Oklahoma, or the sounding of any such signaling device for an unnecessary and unreasonable period of time.

(2) *Radios, television sets, musical instruments, and similar devices.*

- a. Using, operating or permitting the use or operation of any radio receiving set, musical instrument, television, phonograph, drum or other machine or device for the production or reproduction of sound, except as provided for in paragraph (3) below, in such a manner as to violate section 10-304 or cause a noise disturbance.

b.

The operating of any such device in such a manner as to be plainly audible at the property boundary of the source or plainly audible at fifty (50) feet (fifteen (15) meters) from such device when operated in or on a vehicle on a public right-of-way or public space, or in a boat on public waters.

- (3) *Public loudspeakers.* Using or operating a loudspeaker or sound amplifying equipment in a fixed or movable position or mounted upon any sound vehicle in or upon any street, alley, sidewalk, park, place, or public property for the purpose of commercial advertising, giving instructions, directions, talks, addresses, lectures, or transmitting music to any persons or assemblages of persons in such a manner as to violate section 10-304 or cause a noise disturbance unless a permit as provided by section 10-309 is first obtained.
- (4) *Hawkers and peddlers.* Selling anything by outcry (vocal, electrical, or mechanical amplification) within any area of the City therein zoned primarily for residential uses in such a manner as to violate section 10-304 or cause a noise disturbance. The provisions of this section shall not be construed to prohibit the selling by outcry of merchandise, food, and beverages at licensed sporting events, parades, fairs, circuses, and other similar licensed public entertainment events.
- (5) *Animals.* Owning, keeping, possessing, or harboring any animal which by frequent or habitual noisemaking, violates section 10-304 or causes a noise disturbance. The provisions of this section shall apply to all private and public facilities, including any animal pounds, which hold or treat animals.
- (6) *Loading operation.* Loading, unloading, opening or otherwise handling boxes, crates, containers, garbage containers or other objects between the hours of 9 p.m. and 7 a.m. the following day in such a manner as to violate section 10-304 or cause a noise disturbance.
- (7) *Construction work.* Operating, or causing to be used or operated, any equipment used in construction, repair, alteration or demolition work on buildings, structures, streets, alleys, or appurtenances thereto:
  - a. In residential or commercial land use districts between the hours of 9 p.m. and 7 a.m. the following day;
  - b. In any land use district where such operation exceeds the sound level



limits for an industrial land use as set forth in section 10-304.

- (8) *Domestic power equipment.* Operating or permitting to be operated any power equipment used for home or building repair or grounds maintenance, including, but not limited to power saw, sander, lawn mower, or garden equipment, in residential or commercial zones:
  - a. Outdoors between the hours of 9 p.m. and 7 a.m. the following day;
  - b. Any such power equipment which emits a sound level in excess of seventy-four (74) dB (A) measured at a distance of fifty (50) feet (fifteen (15) meters).
- (9) *Commercial power equipment.* Operating or permitting to be operated, any power equipment, except construction equipment used for construction activities, including, but not limited to chain saws, pavement breakers, log chippers, powered hand tools:
  - a. In residential or commercial land use districts between the hours of 9 p.m. and 7 a.m. the following day;
  - b. In any land use district if such equipment emits a sound pressure level in excess of eighty-two (82) dB (A) measured at a distance of fifty (50) feet (fifteen (15) meters).
- (10) *Enclosed place of public entertainment.* Operating or permitting to be operated in any place of public entertainment any loudspeaker or other source of sound with produces, at a point that is normally occupied by a customer, maximum sound levels of ninety (90) dB (A) or greater as read with the slow response on a sound level meter, unless a conspicuous and legible sign at least two hundred twenty-five (225) square inches in area is posted near each public entrance stating: "WARNING: SOUND LEVELS WITHIN MAY CAUSE HEARING IMPAIRMENT." This provision shall not be construed to allow the operation of any loudspeaker or other source of sound in such a manner as to violate section 10-304 of this article.
- (11) *Fireworks or explosives.* The use of explosives or fireworks, or the firing of guns or other explosive devices so as to be audible across a property boundary or on a public space or right-of-way, without first obtaining a permit as provided by section 10-309. This provision shall not be construed to permit conduct prohibited by other statutes, ordinances or regulations governing such activity.

- (12) *Racing events.* Permitting any motor vehicle racing event at any place in such manner as to violate section 10-304 or cause a noise disturbance, without first obtaining a permit as provided by section 10-309.
- (13) *Powered model mechanical devices.* The flying of a model aircraft powered by internal combustion engines, whether tethered or not, or the firing or operating of model rocket vehicles or other similar noise-producing devices, between the hours of 9 p.m. and 7 a.m. the following day or in such a manner as to violate section 10-304 or cause a noise disturbance.
- (14) *Dynamic engine braking devices.* (Commonly referred to as Jacobs Brake.) Operating any motor vehicle with a dynamic engine braking device engaged except for the aversion of imminent danger.
- (15) *Defect in vehicle.* Operating or permitting to be operated or used any truck, automobile, motorcycle, or other motor vehicle which, by virtue of disrepair or manner of operation, violates section 10-304 or causes a noise disturbance.
- (16) *Refuse compacting vehicles.* The operating or causing or permitting to be operated or used any refuse compacting vehicles which creates a sound pressure level in excess of seventy-four (74) dB (A) at fifty (50) feet (fifteen (15) meters) from the vehicle.
- (17) *Garbage collection.* The collection of garbage, waste or refuse between the hours of 9 p.m. and 7 a.m. the following day:
  - a. In any area zoned residential, or within three hundred (300) feet of an area zoned residential;
  - b. In any land use district so as to cause a noise disturbance.
- (18) *Standing motor vehicles.* The operating or causing or permitting to be operated any motor vehicle or any auxiliary equipment attached thereto in such a manner as to violate section 10-304 or cause a noise disturbance for a consecutive period longer than fifteen (15) minutes during which such vehicle is stationary in a residential zone.
- (19) *Quiet zones.* Creating noise in excess of the residential standard as defined in section 10-304 within the vicinity of any school, hospital, nursing home, institution of learning, court, or other designated area, while the same is in use, provided conspicuous signs are displayed in the streets indicating that the same is a quiet zone.

- (20) *Bells and chimes.* Sounding, operating or permitting to sound or operate an electronically amplified signal from any bell, chime or clock, including but not limited to bells, chimes or clocks in schools, houses of religious worship or governmental buildings, which fails to meet the sound level standards set forth in section 10-304 for more than five (5) minutes in any hour.
- (21) *Fixed sirens, whistles and horns.* The sounding or causing the sounding of any whistle, horn or siren as a signal for commencing or suspending work, or for any other purpose except as a sound signal of imminent danger or the testing of such equipment, in such a manner as to violate section 10-304 or cause a noise disturbance.
- (22) *Vehicle, recreational vehicle, or motorboat repairs and testing.* Repairing, rebuilding, modifying, or testing any vehicle, recreational vehicle, motorcycle or motorboat in such a manner as to cause a noise disturbance across a residential real property boundary or within a quiet zone.
- (23) *Groups of gatherings of people.* Talking, laughing, yelling, singing, or otherwise making noise by two (2) or more people between the hours of 9:00 p.m. and 7:00 a.m. the following day in such a manner as to violate section 10-304 or cause a noise disturbance.
- (24) *Emergency-type alarms.* The sounding, operating or permitting to sound or operate an electronically amplified signal from an alarm which fails to meet the sound level standards set forth in section 10-304 for more than fifteen (15) minutes in any hour; or the testing of such emergency alarm which fails to meet the sound level standards set forth in section 10-304 for more than five (5) minutes in any twenty-four-hour period. Testing of any emergency type alarm shall be prohibited between the hours of 9:00 p.m. and 7:00 a.m.

(Ord. No. 0-7778-9; Ord. No. 0-7879-52; Ord. No. 0-9900-31)

Sec. 10-308. - Exemptions.

- (a) The provisions of this article shall not apply to (a) the emission of sound for the purpose of alerting persons to the existence of an emergency, or (b) the emission of sound in the performance of emergency work, or (c) the authorized testing of public safety equipment. This shall include but not be limited to: safety signals and



alarm devices, storm warning sirens or horns and the authorized testing of such equipment, emergency vehicle sirens or horns used when responding to an emergency, and emergency pressure relief valves.

- (b) An organized school sponsored sporting event.
- (c) Public utilities under the authority of the Oklahoma Corporation Commission.
- (d) Interstate railway locomotives and trains en route, and aircraft under authorization by the Federal Aviation Administration.
- (e) Noise created or to be created as a result of a Noise Permit under Section 10-309, such that a permit shall be issued beforehand by the City Manager and/or his/her designee, and such event shall be conducted in accordance with the provisions of such permit.

(Ord. No. 0-7778-9; Ord. No. 0-0203-19)

#### Sec. 10-309. - Permit.

- (a) Applications for a permit for relief from the noise restrictions in these ordinances may be made to the City Manager of Norman. Any permit granted by the City Manager or his authorized representative shall contain all conditions upon which said permit has been granted, including but not limited to the effective dates, time of day, location, sound pressure level, or equipment limitation. The relief requested may be granted upon good and sufficient showing:
  - (1) That additional time is necessary for the applicant to alter or modify his activity or operation to comply with this article; or
  - (2) That the activity, operation, or noise source will be of temporary duration and cannot be done in a manner that would comply with this ordinance; and
  - (3) That no reasonable alternative is available to the applicant.
- (b) The City Manager may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects upon a community or the surrounding neighborhood.
- (c) A permit granted may be granted only for a maximum time period of up to four consecutive days. No more than 7 permits based on the premises or location, with the exception of public parks, may be issued in one year.

Requests for additional permits may be authorized by appeal to the City Council.

(Ord. No. 0-7778-9; Ord. No. 0-0203-19)

Sec. 10-310. - Reserved.

**Editor's note**— Ord. No. 0-0203-19, adopted Dec. 17, 2002, deleted § 10-310 which pertained to enforcement responsibility and derived from Ord. No. 0-7778-9.

Sec. 10-311. - Terminology.

For the purposes of this article, certain words and phrases used herein are defined as follows:

- (a) *A-weighted sound level*: The sound level as measured with a sound level meter using the A-weighting network. The standard notation is dB (A) or dBA.
- (b) *Ambient sound pressure level*: The sound pressure level of the all-encompassing noise associated with a given environment, usually a composite of sounds from many sources. It is also the A-weighted sound pressure level exceeded ninety (90) percent of the time based on a measurement period of not less than ten (10) minutes nor more than thirty (30) minutes.
- (c) *Continuous sound*: Any sound which exists, essentially without interruption, for a period of ten (10) minutes or more.
- (d) *Cyclically varying noise*: Any sound which varies in sound level such that the same level is obtained repetitively at reasonably uniform intervals of time.
- (e) *Decibel*: Logarithmic and dimensionless unit of measure used in describing the amplitude of sound. Decibel is denoted as dB.
- (f) *Device*: Any mechanism which is intended to produce, or which actually produces, noise when operated or handled.
- (g) *Dynamic braking device* (Commonly referred to as Jacobs Brake): A device used primarily on trucks for the conversion of the engine from an internal combustion engine to an air compressor for the purpose of braking without the use of wheel brakes.
- (h) *Emergency work*: Work made necessary to restore property or a public utility to a safe condition following a public calamity, or work required to protect persons or property from an imminent exposure to danger.
- (i) *Emergency vehicle*: A motor vehicle used in response to a public calamity or

to protect persons or property from an imminent exposure to danger.

- (j) *Impulsive noise*: A noise containing excursions, usually less than one second, of sound levels of twenty (20) dB(A) or more over the ambient sound level using the fast meter characteristic.
- (k) *Motor vehicle*: Any vehicle which is self-propelled by mechanical power, including but not limited to passenger cars, trucks, truck-trailers, semi-trailers, campers, motorcycles, minibikes, go-carts, mo-peds, and racing vehicles.
- (l) *Muffler*: An apparatus consisting of a series of chambers or baffle plates designed for the purpose of transmitting gases while reducing sound emanating from such apparatus.
- (m) *Noise disturbance*: Any sound which annoys or disturbs reasonable persons with normal sensitivities, or which injures or endangers the comfort, repose, health, hearing, peace or safety of other persons.
- (n) *Noise*: Any sound which is unwanted or which causes or tends to cause an adverse psychological or physiological effect on human beings.
- (o) *Percentile sound pressure level*: Tenth percentile noise level—The A-weighted sound pressure level that is exceeded ten (10) percent of the time in any measurement period (such as the level that is exceeded for 1 minute in a 10-minute period) It is denoted  $L_{10}$ .  
  
Ninetieth percentile noise level—The A-weighted sound pressure level that is exceeded ninety (90) per cent of the time in any measurement period (such as the level that is exceeded for nine (9) minutes in a 10 minute period). It is denoted  $L_{90}$ .
- (p) *Person*: Any human being, firm, association, organization, partnership, business, trust, corporation, company, contractor, supplier, installer, user, owner or operator, including any municipal corporation or its officers or employees.
- (q) *Plainly audible noise*: Any noise for which the information content of that noise is unambiguously transferred to the listener, such as but not limited to understanding of spoken speech, comprehension of whether a voice is raised or normal, or comprehension of musical rhythms.
- (r)



*Property boundary:* An imaginary line exterior to any enclosed structure, at the ground surface, and its vertical extension, which separates the real property owned by one person from that owner by another person or such imaginary line which separates individual living units in a multiple-family dwelling.

- (s) *Public right-of-way:* Any street, avenue, boulevard, highway, or alley or similar place which is owned or controlled by a public governmental entity.
- (t) *Pure tone:* Any sound which can be distinctly heard as a single pitch or a set of single pitches. For the purposes of measurement, a pure tone shall exist if the one-third octave band sound pressure level in the band with the tone exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one-third octave bands by five (5) dB for center frequencies of five hundred (500) Hz and above, by eight (8) dB for center frequencies between one hundred sixty (160) and four hundred (400) Hz, and by fifteen (15) dB for center frequencies less than or equal to one hundred twenty-five (125) Hz.
- (u) *Repetitive impulsive noise:* Any noise which is composed of impulsive noises that are repeated at sufficiently slow rates such that a sound level meter set at "fast" meter characteristic will show changes in sound pressure level greater than ten (10) dB (A)
- (v) *Sound:* Sound is mechanical energy transmitted by a cyclic series of compressions and rarefactions of molecules of the material or materials through which it passes.
- (w) *Sound level meter:* An instrument, including a microphone, amplifier, RMS detector and integrator or time averager, output meter and/or visual display and weighting networks, used to measure sound levels. The sound level meter shall conform as a minimum to the requirements of ANSI S 1.4 - 1971 Type 2 or its successor publication; and be set to an A-weighted response. An acoustical calibrator accurate to within plus or minus one decibel shall be used to verify the before and after calibration of the sound level meter on each day noise measurements are taken.
- (x) *Sound pressure:* The instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by sound.
- (y)

*Sound pressure level:* Twenty (20) times the logarithm to the base 10 of the ratio of the RMS sound pressure to the reference pressure of twenty (20) micropascals. The sound pressure level is denoted L or SPL.

- (z) *Stationary noise source:* Any device, fixed or movable including motor vehicles, which is located or used on property other than a public right-of-way.
- (aa) *Steady noise:* A sound pressure level which remains essentially constant during the period of observation, i.e., does not vary more than six (6) dB (A) when measured with the "slow" meter characteristic of a sound level meter.
- (bb) *Use district:* Those districts established by the Norman Zoning Ordinances.

(Ord. No. 0-7778-9; Ord. No. 0-7778-61)

#### Sec. 10-312. - Penalties.

Any person violating any provision of this article may be punished by a fine of not less than fifty dollars (\$50.00) nor more than seven hundred fifty dollars (\$750.00), or by imprisonment not to exceed sixty (60) days, or by both such fine and imprisonment. Each time such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

(Ord. No. 0-7778-9; Ord. No. 0-8081-5; Ord. No. 0-9596-45; Ord. No. 0-9900-11; Ord. No. 0-0506-10)

#### Sec. 10-313. - Additional remedies.

Violations of sections 10-304 through 10-309 of this article are deemed and declared to be a nuisance, and such may be subject to summary abatement by means of a restraining order or injunction issued by a court of competent jurisdiction.

(Ord. No. 0-7778-9)

# Attachment 2

City	Day dB(A)	Night dB(A)
Norman, OK	55 L <sup>90</sup> , 65 L <sup>10</sup>	50 L <sup>90</sup> , 60 L <sup>10</sup>
Oklahoma City, OK	55 L <sup>90</sup> , 65 L <sup>10</sup>	50 L <sup>90</sup> , 60 L <sup>10</sup>
Fort Worth, TX	70	60
Tuscaloosa, AL	80	75
Waco, TX	85	80
Austin, TX	75 *sound equipment	(beyond property line)
Portland, OR	55-65 (mixed use)	
Los Angeles, CA	45	
Charleston, SC	67	
Columbia, SC	40-65 (cycle variables)	
Kent, WA	55	45
Lafayette, LA	60	50
Round Rock, TX	55	50
Hartford, CT	55	45
Fargo, ND	55	50
Provo City, UT	65-85	55-60
Independence, MO	60	60
Pueblo, CO	55	50
Billings, MT	65	55



# Attachment 3

# NOISE VARIANCE PERMIT

CITY OF NORMAN ORDINANCE NO. 0-7778-9

NOTE: MAXIMUM PERMISSIBLE SOUND PRESSURE LEVEL WILL NOT EXCEED 80 dB(A)

1. DATE: \_\_\_\_\_
2. NAME: \_\_\_\_\_
3. ADDRESS: \_\_\_\_\_  
\_\_\_\_\_
4. PHONE: \_\_\_\_\_
5. ADDRESS WHERE LIMITATION WILL BE EXCEEDED:  
\_\_\_\_\_  
\_\_\_\_\_

INDOORS                      OUTDOORS

6. HOW LIMITATION WILL BE EXCEEDED:  
BAND                      STEREO                      PA SYSTEM  
OTHER (Specify) \_\_\_\_\_

7. BY REASON OF THE FOLLOWING EXCEPTIONS TO SECTION 10-304:  
Applicant requires additional time to modify or alter his activity to comply with  
Section 10-304.  
The operation or activity is of a temporary nature and cannot be done in a manner  
that would comply with Section 10-304.  
No other reasonable alternative is available to the applicant.

8. DATED INVOLVED: FROM \_\_\_\_\_ TO \_\_\_\_\_
9. HOURS INVOLVED: FROM \_\_\_\_\_ ( ) .M. TO \_\_\_\_\_ ( ) .M.

NOTE: No variance for entertainment or recreational purposes will be permitted earlier than 7:00 a.m. or later than 11:00 p.m. Sunday through Thursday, and no later than 12:00 a.m. (midnight) Friday and Saturday.

10. ADDITIONAL DETAILS: \_\_\_\_\_  
\_\_\_\_\_

I, the undersigned applicant, have read, understand, and accept all of the requirements and conditions as set forth in the Noise Variance Permit Conditions and Guidelines on the reverse side of this form.

SIGNATURE: \_\_\_\_\_

## CONDITIONS AND GUIDELINES:

1. No more than seven Noise Variance Permits will be approved at the same premises or location per calendar year.
2. No variance for entertainment or recreational purposes shall be permitted earlier than 7:00 a.m. or later than 11:00 p.m. Sunday through Thursday and 12:00 a.m. (midnight) on Friday and Saturday.
3. Noise Variance Permits where two or more outside activities will occur within 500 feet of one another on the same date and time will not be issued if the events are in conflict with one another.
4. Application for Noise Variance Permits must be submitted at least two weeks prior to the date of the planned activity. Applications must be submitted in person at the Norman Police Department.
5. Noise Variance Permits may be revoked by, or at the direction of any commissioned supervisor of the Norman Police Department, or by another authorized City employee if violations of any City Ordinance occur at the location for which the Noise Variance Permit is issued. Permits will ordinarily be revoked in the event of the following violations:
  - Uncorrected or repeated violation of the noise level permitted.
  - Consumption or possession of alcoholic beverages by persons under 21 years old.
  - Intoxicated persons on the premises.
  - Narcotics use on the premises.
  - Disturbing the peace by fighting on the premises.
  - Persistent citizen complaints of disturbing the peace caused by the noise source.

A written report will be submitted by the official revoking the permit documenting the justification for revocation.

Any location which has a Noise Variance Permit revoked or at which one or more of the violations enumerated above has resulted in the filing of criminal charges shall not be issued another permit for a minimum of 6 months.

cc: City Clerk, City Manager, Chief of Police, Operations Bureau, Communications Division

Revised 4/30/13

### FOR OFFICE USE ONLY

APPROVED

DISAPPROVED

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Norman Police Department

FEE FOR APPLICATION IS \$25.00

PAID RECEIPT # \_\_\_\_\_ DATE: \_\_\_\_\_

# Attachment 4



**ORDINANCE NO. 20191-05-2012**

**AN ORDINANCE AMENDING SECTION 23.8 "NOISE" OF CHAPTER 23, "MISCELLANEOUS OFFENSES" OF THE CODE OF THE CITY OF FORT WORTH, TO AMEND THE NOISE ORDINANCE TO ADD DECIBEL LEVELS; TO ADD DEFINITIONS RELATED TO NOISE; TO SET MAXIMUM SOUND LEVELS BASED ON ZONING CATEGORIES; TO REGULATE AMPLIFIERS IN THE RIGHT OF WAY; TO RESTRICT ANIMAL NOISE; TO ALLOW EXCEPTIONS, PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION AND NAMING AN EFFECTIVE DATE.**

**WHEREAS**, it is the policy of the City of Fort Worth to minimize the exposure of citizens to excessive noise and to protect, promote and preserve the public health, comfort, convenience, safety and welfare; and

**WHEREAS**, it is the intent of the City to control the level of noise in a manner which promotes commerce; protects the sleep and repose of citizens; promotes the use, value and enjoyment of property; and preserves the quality of the environment; and

**WHEREAS**, it is desirable to address common noise complaints caused by repetitive and excessive noise by adding maximum decibel levels and by adding restrictions on noise from animals and from amplifiers in public right-of-way;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS:**

**SECTION 1.**

Section 23.8 "Noise" is amended to repeal the language contained therein and replace with revised language, to read as follows:

**Sec. 23-8. Noise**

**(a) General Provisions.**

1. *Scope.* This Section applies to the control of all sound and noise within the City of Fort Worth.
2. *Overview.* This Section is designed to regulate noise by various alternative means in order to allow the enforcement of noise regulations at times when and by persons for whom noise meters are not available. A noise may be in violation of this Section because it is disturbing to a reasonable person of ordinary sensibilities or because it

exceeds the decibel level restrictions provided below. If a noise violates more than one of these provisions, the violation will be enforced under whichever provision is most applicable to the situation as determined by the enforcement officer of the City.

**(b) Definitions.**

*Ambient noise* shall mean the all-encompassing noise level associated with a given environment, being a composite of sounds from all sources at the location, constituting the normal or existing level of environmental noise at a given location.

*A-Weighting (dBA)* shall mean the sound pressure level in decibels as measured on a sound level meter using the A-weighted network. The level so read is designated dB(A) or dBA.

*Bounding real property line* shall mean an imaginary line at the ground and its vertical extension which separates the real property owned or occupied by one person from that owned or occupied by another person.

*Decibel (dBA)* shall mean the unit of measurement for sound pressure at a specified location.

*Governmental function* shall mean work conducted by a governmental entity in the interest of the community.

*Sound level* shall mean the instantaneous sound pressure level measured in decibels obtained by the use of a sound level meter set for A-weighting on slow integration speed, unless otherwise noted.

*Residential* shall mean: property zoned for residential use in accordance with the City's zoning ordinance

*Unreasonable noise* shall mean:

- (1) Any unreasonably loud, disturbing, and unnecessary noise which causes material distress, discomfort or injury to persons of ordinary sensibilities in the immediate vicinity thereof; or
- (2) Any noise of such character, intensity and continued duration, which substantially interferes with the comfortable enjoyment of private homes by persons of ordinary sensibilities.

**(c) Restrictions on Decibel Levels.**

- (1) Maximum sound levels. During the times and in the zoning districts (except for activities originating in industrial zoning districts) set out below, the activities that create a sound pressure level on the complainant's bounding real property line that exceeds the maximum allowable sound level (dBA) below are declared to be public nuisances:

All **residential** (one-, two- and multi-family) zoning districts:

Daytime: 7 a.m. to 10 p.m. = 70 dBA  
Nighttime: 10 p.m. to 7 a.m. = 60 dBA

All **non-residential and mixed-use** zoning districts (excluding industrial zoning districts) outside "H" Central Business District and "TU" Trinity Uptown:

Daytime: 7 a.m. to 10 p.m. = 80 dBA  
Nighttime: 10 p.m. to 7 a.m. = 70 dBA

**"H" Central Business District, "TU" Trinity Uptown, and West 7<sup>th</sup> Village** (per attached map)

Sunday – Thursday  
Daytime: 7 a.m. to 10 p.m. = 80 dBA  
Nighttime: 10 p.m. to 7 a.m. the following day = 70 dBA

Friday – Saturday  
Daytime: 7 a.m. to 2 a.m. the following day = 80 dBA  
Nighttime and Sunday: 2 a.m. to 7 a.m. = 70 dBA

ALL zoning where ambient noise level exceeds the prescribed maximum level:

7 a.m. to 10 p.m. = Existing Ambient (dBA) + 3 dBA  
10 p.m. to 7 a.m. = Existing Ambient (dBA)

(2) Method of noise measurement. Noise measurements shall be a minimum of 30 seconds in duration. Decibel levels are measured from the complainant's property line. For residential districts adjacent to other districts (excluding industrial zoning districts), the residential decibel levels apply when measured from a residential complainant's property line. Violations will be determined based on the highest registered reading in that measurement period. All measurement levels will be inclusive of any ambient noise that exists at the time of the measurement.

(d) Noise Prohibited.

(1) In addition to the other noise restrictions in this Section, no person shall make, cause, suffer, allow or permit unreasonable noise in such a manner, or with such volume, intensity or duration, so as to disturb a reasonable person of ordinary sensibilities. A decibel level shall not be required for the enforcement of this subsection.

(2) This subsection is intended to apply to, but is not limited to, unreasonable noises in the form of:

- a. Amplifiers in Public ROW and on City Property. The use of a bullhorn, loudspeaker, or other amplification is prohibited in the public right-of-way and on City of Fort Worth property, unless permitted as an exception below.

Exceptions:

- i. Public safety official while performing their duties.

- ii. Persons with an Outdoor Event Permit as described in Section 20-405 of the City Code.
- iii. Persons with permission from pertinent City department director or designee.
- b. Animals. It shall be unlawful to keep, or to permit the keeping of, any dog(s) or rooster(s) or any other bird or animal that creates any bark, cry, crow, or other sound on a frequent, repetitive or continuous basis for ten (10) minutes or longer.
- c. Construction Work. Noise created by construction work within three hundred (300) feet of an occupied residential structure involving the erection, excavation, demolition, alteration, or repair of any building, structure, or flatwork is prohibited as follows:

Before 7:00 a.m. or after 8:00 p.m. Monday-Friday  
Before 9:00 a.m. or after 8:00 p.m. Saturday-Sunday

- d. Solid Waste Collection. Noise created by solid waste haulers within three hundred (300) feet of residential zoning before 6:00 a.m. or after 11:00 p.m. is prohibited, unless a waiver is granted to the waste hauler by the Director of Code Compliance or his designee in accordance with the Grant of Privilege issued by the City to the waste hauler.
- e. Music. The playing of any music or musical instrument in such manner or with such volume or bass, particularly during the nighttime hours described in Section (c) Restrictions on Decibel Levels above, as to annoy or disturb the quiet, comfort or repose of persons of ordinary sensibilities in any dwelling, hotel or other type of residence.
- f. Horns or other signal devices. The continued or frequent sounding of any horn, air horn, or signal device on any vehicle except as a danger or warning signal; the creation by means of any such signal device of any unreasonably loud or harsh noise for any unnecessary and unreasonable period of time.
- g. Operation of motor vehicles. The revving of any engine, the playing of any music with such volume or bass, or the operation of any vehicle so out of repair, so loaded or in such manner as to create loud or unnecessary grating, grinding, jarring, rattling, or squealing noise or vibrations.

(e) Exemptions.

The following acts and sounds shall be exempt from the requirements of this Section:

1. Noise generated due to normal building conditioning and ventilation and property maintenance.
2. Noise generated on public and school property, as permitted by the property owner.
3. Noise generated by an Outdoor Event that is permitted as described in Section 20-405 of the City Code.
4. Noise generated by amplifiers at entertainment venues having a capacity of 1,000 or more persons within "TU" Trinity Uptown.
5. Noise generated by any governmental body and its contractors in the performance of a governmental function.
6. Noise generated by airport, railway and vehicular transportation.



7. Noise produced by gas drilling and production, which is regulated by the Gas Drilling Ordinance in Chapter 15 of the City Code.
8. Noise generated at Texas Motor Speedway.

**(f) Enforcement.**

The provisions of this section shall be enforced primarily by the Police Department and Code Compliance Department.

**(g) Penalties.**

1. A person commits an offense if the person makes noise in violation of this Section.
2. An offense under this Section is punishable by a fine of not more than Five Hundred Dollars (\$500.00).
3. Each occurrence of a violation, or, in the case of multiple violations, each day a violation occurs or continues, constitutes a separate offense and may be punished separately.
4. A violation of this Section is a nuisance. The prosecution of an offense under this Section does not limit the City's right to abate the nuisance, including the use of injunctive or other civil relief.

## **SECTION 2.**

That this ordinance shall be cumulative of all other ordinances of the City of Fort Worth, Texas, and shall not repeal any of the provisions of such ordinances, except in those instances where provisions of such ordinances are in direct conflict with the provisions of this ordinance.

## **SECTION 3.**

That all rights or remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the City Code, or any amendments thereto that have accrued at the time of the effective date of this ordinance; and as to such accrued violations, and all pending litigation, both civil and criminal, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

## **SECTION 4.**

That it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared void, ineffective or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such voidness, ineffectiveness or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation herein of any such void, ineffective or unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 5.**

That any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Five Hundred Dollars (\$500.00) for each offense. Each day that a violation exists shall constitute a separate offense.

**SECTION 6.**

That the City Secretary of the City of Fort Worth, Texas, is hereby directed to publish this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by the V.T.C.A. Local Government Code Subsection 52.013.

**SECTION 7.**

This ordinance shall take effect after adoption and publication as required by law.

APPROVED AS TO FORM AND LEGALITY:

By: Melinda Ramo  
Assistant City Attorney

Adopted: May 1, 2012

Effective: 5/12/12

August 9, 2018

Minutes. City Council Oversight Committee

Noise ordinance discussion



## CITY COUNCIL OVERSIGHT COMMITTEE MINUTES

August 9, 2018

The City Council Oversight Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 4:00 p.m. in the City Council Conference Room on the 9th day of August, 2018, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray 48 hours prior to the beginning of the meeting.

PRESENT:	Mayor Lynne Miller and Chairman Clark
ABSENT:	Councilmembers Carter, Castleberry, Hickman, and Holman
OTHER STAFF PRESENT:	Councilmember Bierman Mr. Terry Floyd, Development Coordinator Ms. Brenda Hall, City Clerk Ms. Shelby Jameson, Administrative Tech III Mr. Rick Knighton, Assistant City Attorney Mr. Phil Nelson Lieutenant Jeff Robertson, Police Department Ms. Jeanne Snider, Assistant City Attorney Major. David Teuscher, Police Department

Item 1, being:

### DISCUSSION REGARDING THE CITY OF NORMAN NOISE ORDINANCE.

Ms. Jeanne Snider, Assistant City Attorney, mentioned that Lieutenant Jeff Robertson and Major Teuscher, Norman Police Department are going to step in on the enforcement segment of this discussion and Mr. Phil Nelson is here to help illiterate on sound discussion. She mentioned that she will provide a brief background on the Noise Ordinance.

She explains that there are prohibitions that include the use or maintenance of items or activities. The ordinance establishes on the maximum district noise levels. She said that there are limits on motor vehicle noise; however, there are exemptions for alerting people to emergencies, performance of emergency work or testing public safety equipment. There are also exemptions for organized school sporting events, public utilities, interstate railroads, railways, and aircraft.

The ordinance allows for the issuance of a noise variance permit, that Lieutenant Robertson will discuss. She said noise standards are often measured in decibels and they are generally employed to measure sound pressure. She mentioned that not every city she found used the decibel to measure, but the use of the decibel does provide some scientific evidence as to noise to set apart a person's sensory observation or personal impression. She said that our noise levels are broken up to L90, L10, and L1 and that they are statistical noise levels for sound level equaled or exceeded X% of the sample time. She said that an example would be L90 is level which exceeded the decibel level 90% of the time. She said that she and Mr. Rick Knighton, Assistant City Attorney and the Police Department, also met with Mr. Nelson, the Department of Labor, and a representative from U.S. Department of Labor to discuss and understand noise levels. The ordinance states: It shall be a



violation of this article for any person to operate or permit to be operated any stationary source of sound which either:

- (1) Creates a sound level greater than 15dB(A) above the ambient sound level (L90) within any land use district during any measurement period; or
- (2) Creates a ninetieth percentile sound level (L90), a tenth percentile sound level (L10) or a first percentile sound level (L1) for any measurement period which exceeds the limits set forth for the following receiving land use districts when measured at the boundary or at any point within the property affected by the noise.

She said the actual sound level without the loud noise, band, or the construction equipment, is the ambient sound level.

Mayor Miller asked question about (A). She said that the night they had a meeting about Hollywood Corners there were some things different about the bass sounds and the higher pitched sounds. She said that was one of the main issues because music has that bass sound that you typically hear over everything.

Mr. Nelson said that (A) and (C) is used because it mimics what we hear and it doesn't put as much emphasis on the lower frequencies and that (C) is used when (A) reaches a much higher level. So if someone was measuring a concert and it starts measuring 90dB, they would then switch to (C).

Ms. Snider said bass can travel through a mass and men and women hear differently as they age. Everyone's ears are different when processing different frequencies. She said "When a noise source can be identified and its noise measured in more than one land use category, the limits of the most restrictive use shall apply at the boundaries between different land use categories. For the purpose of enforcing these provisions a measurement period shall not be less than five (5) minutes nor more than fifteen (15) minutes.

She said that in Section 307, it states it is unlawful for anyone to make, continue, or cause to be made or continued any noise disturbance, but noise disturbance is defined as any sound which annoys, or disturbs or disturbs a reasonable person with normal sensitivities or which injures or endangers the comfort imposed health hearing to the safety of other persons. An example: if the sound source is at 75 and you go out 300 feet, the calculations make it 45 decibels at that location, 300 feet from that sound source. For every doubling of the feet drop 6 decibels.

Councilmember Clark said to measure the stationary item, do you have to measure right in front of the item? Where are you measuring to get that initial measurement?

Ms. Snider said under the Hollywood Corners example the SPUD specified four areas to measure from. So there are four points on their property we can go to and say at this corner it was 75 or 60 and we would know if this house was 600 feet away you could calculate it. The person saying it's loud could calculate what the decibels were at their house and can do it online.

Councilmember Clark said we live in a city that's half urban, half rural where we are seeing a unique situation where this needs to be addressed and updated. She said that the language needs to be overhauled and she is excited for the discussion because Hollywood Corners would not be the last issue related to noise issues. Ms. Snider said urban is meeting rural and residential and we need to find a way to handle this when these different uses collide.

Councilmember Clark said she would like to see a comparison of citizens from urban and rural regardless of size.

Ms. Snider said our ordinance lacks the live outdoor entertainment component. She said levels in our Noise Ordinance are more for inside industrial type noise.

Councilmember Clark said she wished Councilmember Wilson was here because she was a strong advocate for the Agri-weddings and that is going to be the exact same issue all over again.

Ms. Snider said disturbing the peace, citations are often neighbor to neighbor, apartments, parties on a Friday night, parties in a backyard. However, all those citations filed by the Hollywood Corners neighbors is under disturbing the peace, playing or creating loud or unusual sounds.

Lt. Robertson demonstrated the decibel meter, sound pro device developed by 3M. As long as it is kept in calibration and inspected annually, it should work. There are no certifications, school, training, or school for operating the device. As long as the device is functioning correctly, the individual using the meter should be able to read the display and take the reading. He said it is very similar to officers using radar. So an officer has a radar device or they use to measure speed, that officer cannot get on the stand and tell you all the technical reasons the radar works, but they know how to work the device itself and how to annotate that in court. He said all he would have to do is power the device up, go to the button for calibration, put on the calibrator, power up the calibrator, and tell the device to calibrate.

Mayor Miller asked Lt. Robertson that is how you know if it is working right?

Lt. Robertson said reading within .02 on the meter, which is the +/- is within reason then you can go out and take your reading and be confident that it's reading correctly.

Councilmember Clark said some of the residents had concerns about how an officer will not understand what is going on and when they get another officer and they do not know what is going on which makes the residents have to explain all over again. She said this device should totally take that out of the equation?

Lt. Robertson said it removes any need for an officer to be formally trained or certified. As you know, decibels in general frequencies, weightings, and scales can be confusing because you do not exactly know how, when, where to take that reading from and apply it within the ordinance. He said that is something that has to be discussed with our officers. He said the Hollywood Corners SPUD with the four different locations authorized or approved to take the readings from, it is going to be pretty simple. He said he stood there for 10 minutes to take reading, then it showed him the average, L90 framework to know whether or not they are in compliance.

Councilmember Clark asked if that solves the measuring dilemma in this specific instance. She said she hopes now that we all know how this works and that we can put in to ordinance for all these other instances that she assumes that will happen in the future. Ms. Snider said the ordinance states use districts are measured at the boundary or any point within the property affected by the noise", but the reading can be taken there and we can also take it at the sound source. With the applied math, then the decibels could be figured correctly, and we could know what the decibels would be at the complaining party's front door.

Lt. Robertson said as far as the enforcement aspect of it, ultimately it boils down to whether or not the person who is receiving that noise is reasonably being disturbed by it. He said he does not know if you can necessarily measure that by decibels all the time. He said the Police Department has gone

out to take decibel readings and they are in compliance with the ordinance and they cannot write a citation for that because a noise violation citation must be a misdemeanor done in the police presence.

Councilmember Clark asked how you factor in any noise disturbance along with the use district noise level. She said it seems like that would be something they could write a citation on in addition to disturbing the peace.

She said in Section 10-311 the noise disturbance is unlawful for any person to make, continue, or cause to be made any noise disturbance. She said that is the issue and that it is not defined, hence the constitutional issues. She said that there is a law in the books that we cannot enforce.

Ms. Snider said complaining witnesses can file a disturbing the peace citation.

Lt. Robertson said it is really not much different than citing for disturbing the peace because that is a citizen on citizen citation. Mr. Knighton said the issue goes back to the noise disturbance provision under Chapter 10. It is pretty much the same as disturbing the peace under Chapter 10 historically because of the issue with the decibel levels. He said we have historically used Chapter 10 because it is clearer and our office can handle it a lot better. Technically what I think Lt. Robertson is saying is the police officers cannot be the complaining witness, but the citizen has to be the complaining party. He said he thinks the reason for the alternative language in Chapter 10, is that somebody could be within those decibel levels, but still be disturbing someone's peace.

Ms. Snider said in the last fifteen to eighteen years we have had Hollywood Corners, the Railhead, Opolis and Pueblo, and when Pearls was on Ed Noble Parkway, one night that the people across I-35 said it was too loud. These types of complaints are not common that is why they have never had to worry about the decibel readings or upgrade the decibel level.

Lt. Robertson demonstrated the noise meter.

Mr. Nelson said it also gives you the LEQ equivalent which is like an average; it takes the 5 minute measure.

Ms. Snider highlighted other cities in Oklahoma. Oklahoma City was the other City that used the L90 and L10 measurement.

Councilmember Clark asked if we took out the L90 and L10, what does that do for enforcement, does that mean if they get past a certain level it is game over.

Ms. Snider said she had previously discussed that with Mr. Nelson and Terry from U.S. Department of Labor and that they both felt that the L90 gives you the best numbers and average which is 90% of the time. That is where people usually would find the best decibel reading. You do not necessarily have to have the L1, L10, or L90.

Councilmember Clark asked the difference with Oklahoma City providing more guidance regarding law enforcement.

Ms. Snider said Oklahoma City has violation procedures. They file the complaint in court and the enforcement officer would take steps similar to a police officer had. She said when she had first started here, the City had an enforcement officer who was the acting noise officer.

Ms. Snider said we are going to have to set out steps to take on the noise issues.

Lt. Robertson said their past practice as an agency in general on disturbing the peace calls, loud parties, loud music, whatever it may be, is go out and give them the opportunity to correct the problem. They would make face to face contact with them, explain to them what the problem is and ask them to correct it. If they go out a second time, they will typically issue them a citation, but those citations in the past have mostly been disturbing the peace citations. Most of the time, the citations have to be signed by the complaining party rather than the police. He said the Police Department had instances where the Legal Department has agreed to let officers be the agents, but most of that has been really big loud college parties that are a nuisance to the entire neighborhood. So if the police go out and find the party is completely out of control and unreasonable, then the officers can cite them for disturbing the peace, but that is not the favored practice or procedure. If the Police Department knows of a place that is a chronic problem, then they might suspend that procedure, and the first time they go out and the decibel reading is in violation, write a ticket.

Councilmember Clark said she is still getting emails from Hollywood Corner neighbors saying they are looking for a summer home away from home because it is that bad. She said she would like to see a noise ordinance that states that if there is regular outdoor live music, that the City will perform of regular check.

Lt. Robertson said officers have gone out unannounced and taken readings at Hollywood Corners and they have been in compliance. Other instances they had bands playing and were in compliance.

Ms. Snider said other cities have added noise conditions for live outdoor entertainment and she needs to explore that more.

Councilmember Clark said that is what she would like to explore.

Lt. Robertson said that since February 2017, 80 noise variances have been issued.

Councilmember Clark asked if they have to notify neighbors about the noise variance.

Lt. Robertson said they are not required to but if he talks to them directly, he always advises them to do so and a lot of them are diligent before they even call him.

Major Teuscher said they are revocable if they violate the parameters of the permit.

Councilmember Clark asked Ms. Snider about Stillwater's code. She said they prohibit loud music with limits for days and nights based on distance in residential areas.

She said to look at the Pueblo issue as well and would like to explore overlay districts.

Councilmember Clark would like to look at adding more live entertainment and that it would be helpful to look at the resident districts to see what Stillwater did with that.

Councilmember Clark said the other thing she would like to look into is, how this is going to work with our agricultural weddings. She said she knows we get several variances so it may never be a problem, but do we need to create one for A-1 and A-2 and if we do, we need to create an exemption for all farm equipment between 5:00 a.m. and 9:00 p.m.



Councilmember Bierman said she gets really torn up about stuff like this. She said we will not be able to consistently make everyone happy. Jazz in June is obviously once a year, a well-established event, a reasonable and considerate event, and it still bothered people. That kind of issue made her realize there are always going to be people complain. She said she has a lot of friends in Austin and there a lot of music venues there and they are saying this is something even the City of Austin has had to come to terms with. She thinks we can find the balance and are on the right track.

Mayor Miller said she is concerned about people who have set up shooting targets and go on for long periods of time. It is not fun, living next to people shooting off all of the time, all evening all Saturday

Councilmember Clark thanked staff for all of the work and research put into this issue. She said she thinks we have given staff enough direction to continue the research.

Items submitted for the record

1. Memo dated August 3, 2018, from Ms. Jeanne Snider, Assistant City Attorney, to the Council Oversight Committee
2. Current Noise Ordinance to the Council Oversight Committee
3. Power Point Presentation entitled City Council Oversight Committee, Noise Ordinance, dated August 9, 2018

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ADJOURNMENT:

The meeting adjourned at 5:02 p.m.

November 8, 2018

Staff Report. Planning Commission

UNP PUD amendment to allow outdoor live  
entertainment at Redrock Canyon Grill

\*City Council approved 12/11/18  
Minutes not available

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ORDINANCE NO. O-1819-12

ITEM NO. 7

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**STAFF REPORT**

**GENERAL INFORMATION**

APPLICANT	UNP Restaurant, L.L.C., dba Redrock Canyon Grill
REQUESTED ACTION	Amendment of the allowed uses approved with the Planned Unit Development established by Ordinance No. O-0203-2, as amended by O-0506-9, O-0607-13 and O-1415-45
EXISTING ZONING	PUD, Planned Unit Development District
SURROUNDING ZONING	North: PUD, Planned Unit Development District East: PUD, Planned Unit Development District South: PUD, Planned Unit Development District West: PUD, Planned Unit Development District and RM-6, Medium Density Apartment District
LOCATION	1820 Legacy Park Drive
SIZE	1.898 acres, more or less
PURPOSE	To amend the use allowed on a specific lot by adding - Seasonal use of an outdoor stage for live entertainment
EXISTING LAND USE	Restaurant
SURROUNDING LAND USE	North: City Park – Legacy Park East: City R-O-W South: Commercial Strip Center West: I-35 & Multi-Family
2025 LAND USE PLAN DESIGNATION	Mixed Use



### **ALTERNATIVES/ISSUES:**

- **IMPACTS** As University North Park continues to develop with more hotels, apartments, retail shops, restaurants, it is evident there is a need for compatible diverse uses within the development. This PUD amendment will allow this element of various uses for this business.

This proposal will not create any negative impacts to the overall development of University North Park; UNP development was designed as a master development plan to accommodate traffic, parking and commercial and entertainment uses to serve the surrounding population. Again, this proposal is strictly for Redrock Canyon Grill, for an area of 221 square feet and as stated in the definition the applicant will not interfere with any permitted or City organized activities at the adjacent parkland.

### **OTHER AGENCY COMMENTS:**

- **PRE-DEVELOPMENT:** No meeting was required for this application.
- **GREENBELT COMMISSION MEETING:** No meeting was required for this application.
- **PARK BOARD:** Park land dedication not required for this application.
- **PUBLIC WORKS:** There are no additional platting or public works requirements for this property.

### **STAFF RECOMMENDATION:**

University North Park is continuing to grow, with new/different service oriented businesses, retail shops, hotels, and residential uses. As the growth continues more types of businesses will want to locate within this area and be granted the ability to provide to their customers a level of service they propose. Additionally, the residential elements allowed within the University North Park development demonstrates the population is expanding in the area and more diverse goods and services will be sought-after. Staff submits this request to Planning Commission with recommendation of approval for Ordinance No. O-1819-12.



**SYNOPSIS:**

The applicant is requesting to amend the University North Park PUD for the single parcel they own, situated south of Legacy Park, to allow continuation of the outdoor live entertainment they were providing to their guests at Redrock Canyon Grill. If adopted this PUD amendment will allow for an outdoor live entertainment venue only at this subject tract.

The applicant opened Redrock Canyon Grill in 2015. Redrock has a covered patio area on the east side of their building; this is a patio dining area. In addition to the patio dining area there is a gazebo, also located on the east side of the lot and this gazebo operates as an outdoor bar area for the restaurant. In the spring of 2018 (to staff's knowledge) the applicant constructed a 221 square foot "stage" area also on the east side of their property, in close proximity to the outdoor bar and patio dining area. The stage floor is approximately 7-inches off the ground. This stage has been used as the performance area for musicians and is close enough to the patio area that those dining on the patio and sitting at the bar can hear the music. Use of the stage area is dependent on weather conditions and only during business hours, the restaurant closes at 9 o'clock Sunday through Thursday and 10 o'clock on Friday and Saturday nights. Please see Attachment A for the subject tract and location of the stage.

**BACKGROUND:**

This application is coming to Planning Commission and City Council due to a violation filed with Code Compliance. At a previous City Council meeting the Planning Director was asked if there was a business in the City that was operating with outdoor live entertainment – the Director stated there was not. Following the Council meeting a citizen posted on one of the FaceBook Ward pages that Redrock Canyon Grill was providing outdoor live entertainment to their guests. This information was passed along to the Planning Director, the Director notified Code Compliance and they reached out to the owners of Redrock Canyon Grill notifying them that they were operating outside of the allowed uses in the UNP PUD Narrative. The applicant is now coming to Planning Commission and City Council requesting approval of an amendment to the UNP PUD so they may continue providing their customers with musical entertainment.

**ANALYSIS:**

The PUD, Ordinance No. O-0607-13, passed on December 12, 2006 regulates uses allowed within University North Park. The PUD narrative allows any use by right in the C-2, General Commercial Zoning District; as stated in the current PUD narrative, only C-2 uses "permitted as a matter of right" are currently allowed in University North Park. Therefore, an area designated for an outdoor live entertainment venue is not currently allowed.

With the exception of the City park area – Legacy Park - the subject parcel advertised for this amendment will be the only location in University North Park where outdoor live entertainment will be allowed. The PUD amendment will be labeled "Exhibit I" and become part of the PUD Narrative.

As part of the UNP PUD amendment the applicant has provided a definition of "outdoor live entertainment" for their specific use as follows:

***Outdoor Live Entertainment: Allowing outdoor live entertainment within the area designated on the site plan (Exhibit I). The outdoor live entertainment will occur seasonally, weather permitting, and during business hours, so long as said outdoor live entertainment does not interfere with any permitted or City organized activities at the adjacent parkland.***



**Date:** January 4, 2019

**To:** City Council Oversight Committee

**From:** Jeanne Snider, Assistant City Attorney  
Jane Hudson, Interim Planning and Development Director

**Subject:** Noise Ordinance/Live Outdoor Entertainment

### **BACKGROUND**

On August 9, 2018, a presentation was made to the City Council Oversight Committee regarding the noise ordinance. City Council Oversight asked for additional information regarding live outdoor entertainment. This memorandum presents background information and timeline of discussions of the noise ordinance, and specifically live outdoor entertainment.

### **DISCUSSION**

During the past 2-1/2 to 3 years, there have been ongoing discussions regarding the noise ordinance, and specifically how it relates to live outdoor entertainment. There have been a few specific circumstances that brought this matter to the attention of the City. Outdoor noise, and specifically outdoor live entertainment, are particular areas that can cause conflict between multiple land uses or competing businesses.

Below is a timeline, with attachments, that provides a history of outdoor live entertainment venue issue.

08/11/16	Staff Report. Planning Commission. Puebla Tacos y Tequileria requesting Special Use for Live Entertainment on back patio. Staff supported occasional outdoor live entertainment.
09/27/16	City Council Minutes. Consideration for Special Use for a live entertainment venue for Puebla Tacos y Tequileria. Application was tabled and discussion of outdoor live entertainment was sent to CPT Committee.
10/21/16	Memorandum from Planning and Community Development Director to CPT Committee. Thorough discussion regarding Outdoor Live Entertainment Venue, zoning ordinance discussion, recommendation to zoning ordinance, the noise ordinance. Recommended amending Zoning Ordinance to prohibit outdoor live entertainment venues as Special Use and clarify definitions.
10/27/16	CPT Minutes regarding discussion of definition of live entertainment in the Zoning Ordinance.
11/23/16	Memorandum from Planning and Community Development Director to CPT Committee. Discusses possible changes to existing requirements for outdoor live entertainment and possible impacts of outdoor live

	entertainment in the downtown area and continued analysis of Noise Variance Permits and Outdoor Live Entertainment as a Special Use. Specific questions answered to questions such as an “Art and Entertainment District”, impact of downtown music, overlay districts, effect on Center City, should Council hear Special Use case by case, outdoor entertainment only in C-2 and C-3, increasing the decibel limit, allowed only in PUDs. Research indicated cities either prohibit outdoor live entertainment or do not regulate it via zoning, but depend on noise ordinance to regulate on complaint basis. Recommendation to amend Zoning Ordinance to prohibit outdoor live entertainment as Special Use, clarify definitions, set specific guidelines for live entertainment, restrict to indoor only unless Noise Variance Permit; establish Arts and Entertainment Overlay Districts with regulations for amplified, live music.
12/01/16	CPT Minutes regarding definition of live entertainment in the Zoning Ordinance. Thorough discussion of questions presented in 11/23/16 Memorandum.
12/13/16	City Council Minutes. Puebla postponed indefinitely.
02/18/18	Staff Report. Planning Commission. Hollywood Corners requests for rezoning property as a SPUD to allow outdoor live entertainment. Live entertainment was discussed. Staff recommends approval of the SPUD for live entertainment for indoor use only.
06/12/18	City Council Minutes. Approval for outdoor live entertainment with limitations of month, days, and times at Hollywood Corners.
08/03/18	Memorandum from Legal to City Council Oversight regarding noise ordinance, decibel sound levels, noise disturbance or disturbing the peace, enforcement, other cities and constitutional considerations.
08/09/18	City Council Oversight Minutes. Discussion of noise ordinance; request for information regarding live outdoor entertainment and agri-weddings.
11/08/18	Staff Report. Planning Commission. UNP PUD amendment to allow outdoor live entertainment at Redrock Canyon Grill. Staff recommends approval. *City Council approval on 12/11/18. Minutes not available.

The Noise Ordinance sets limitations of sound levels/decibels in each use district. There is nothing in the Zoning Ordinance regulating the use of outdoor entertainment, whether it is live or amplified recorded music. The use and regulation of live outdoor entertainment needs to be defined and regulated in the Zoning Ordinance.

### **POSSIBLE AMENDMENTS TO ZONING ORDINANCE**

Live Entertainment Venue is defined in two places in the Zoning Ordinance, under the definition for Accessory and the definition for Live Entertainment Venue:

“**ACCESSORY.** ... 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.”....

**“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 this category. This category shall not include, in any manner, any Adult Entertainment Establishment.”

Changes to the definitions of Live Entertainment should include clarification of indoor vs. outdoor areas allowing live entertainment as well as including a definition of “outdoor music venue. Listed are suggestions revising current definitions and adding a definition for outdoor music venue.

**“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.”...

**“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 this category **and all activities are located within a fully enclosed building.** This category shall not include, in any manner, any Adult Entertainment Establishment.”

**“OUTDOOR MUSIC VENUE/OUTDOOR ENTERTAINMENT. 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.**

## **CONCLUSION**

Residential uses and businesses located around entertainment venues have a right to be protected from the impacts live/amplified outdoor music venues can create. The Zoning Ordinance (Z.O.) has not been updated and lacks the ability to control or monitor some of the newer issues and uses establishing in Norman. The authors of the Z.O. did not foresee the need to account for protection of adjacent properties from live/amplified outdoor entertainment venues as the use was not present at the time the Z.O. was written. Staff proposes amendments to the Z.O. to possibly alleviate future issues/conflicts.

As with recent applications, if an applicant wants to provide an “outdoor music venue/outdoor entertainment” area then the applicant should be required to request approval of zoning for Special Use (possibly the C-3 District), PUD (Planned Unit