



City of Austin Planning and Development Review Department  
505 Barton Springs Rd. Suite 175 / P.O. Box 1088 / Austin, Texas 78767-1088

RECEIVED  
AUG 30 2012

## OUTDOOR MUSIC VENUE APPEAL

If you are an applicant and/or property owner or interested party, and you wish to appeal a decision on an Outdoor Music Venue permit, the following form must be completed and filed with the Director of Planning and Development Review Department, City of Austin, at the address shown above. The deadline to file an appeal is 14 days after the decision was issued by the accountable official. If you need assistance, please contact at (512) 974-2941.

CASE NO. \_\_\_\_\_

VENUE NAME Cheer UP Charlie's

VENUE ADDRESS 1104 E. 6th Street  
Austin, TX 78702

CITY CONTACT \_\_\_\_\_

SECTION OF CODE APPEALED: 9-2-14 (C), 9-2-54 and 9-2-55 (512) 431-2133 HOME

INTERESTED PARTY STATUS: Indicate how you qualify as an interested party who may file an appeal by the following criteria: (Check one)

- ☐ I am the notice owner of single family use
- ☒ I am the applicant or agent representing the applicant
- ☐ I am a representative of a neighborhood association and submitted my opposition in writing (date) \_\_\_\_\_
- ☐ I am the notice owner of a multifamily use located adjacent to the venue (new permits only)

In addition to the above criteria, I qualify as an interested party by one of the following criteria: (Check one)

- ☐ I am the notice owner of single family use located within 600 feet of the subject site.
- ☐ I am the notice owner of a multifamily use located adjacent to the venue.
- ☐ I am an officer of a neighborhood or environmental organization whose declared boundaries are within 600 feet of the subject site.

DECISION TO BE APPEALED\*: (Check one)

- ☒ Approval of an Outdoor Music Venue Permit
- ☐ Denial of an Outdoor Music Venue Permit

Date of Decision: 8/18/2012  
Date of Decision: \_\_\_\_\_

STATEMENT: Please provide the decision being appealed and the specific grounds for the appeal. If specific grounds are not provided appeal will not be considered valid:

Appealing the recommendation stated in the City's renewal Permit issued on 8/18/2012. The applicant disputes the basis for the City's decision as described in the attached "2012 Outdoor Music Venue Sound Impact Plan" under heading titled: Impact on Residential Properties / Additional Restrictions, 2nd page, last paragraph.

(Attach additional page if necessary.)

See Attachment

August 30, 2012

City of Austin  
Planning and Development Review Department  
505 Barton Springs Rd., Suite 175  
P.O. Box 1088  
Austin, Texas 78767-8835

Re: Outdoor Music Venue Appeal  
Cheer Up Charlies  
1104 East 6<sup>th</sup> Street  
Austin, Texas 78702

Dear Sir or Madam:

I am writing to appeal the City's August 18, 2012, decision to limit approval of Cheer Up Charlies OMV permit to 10:00 a.m. to 10:00 p.m. on Friday and Saturday and 10:00 a.m. to 8:00 p.m. on Sunday through Thursday. City Ordinance 9-2-14 (C) allows the City to approve an OMV permit for the hours of 10:00 p.m. to 12:00 midnight on Friday and Saturday and 8:00 p.m. to 10:00 p.m. on Sunday through Thursday based on the following factors:

- (i) agreements with owners and tenants of nearby properties;
- (ii) agreements with representatives of affected neighborhood organizations;
- (iii) the code compliance history of the site; and
- (iv) public health and safety based on compatibility with adjacent land uses.

On the same date, the City granted Cheer Up Charlies' application for an OMV permit for the hours of 10:00 a.m. to 8:00 p.m. on Sunday through Thursday and 10:00 a.m. to 10:00 p.m. on Friday and Saturday. Cheer Up Charlies is not appealing the decision to grant their OMV permit for these time periods.

In its August 18<sup>th</sup> decision, the City denied Cheer Up Charlies' application with regard to the extended hours of 10:00 p.m. to 12:00 midnight on Friday and Saturday and 8:00 p.m. to 10:00 p.m. on Sunday through Thursday based on factors (i) and (ii). The City stated that "nearby neighbors/interested parties are in total opposition of the OMV permit renewal/extended hours" as the basis for its denying the extended hours.

This decision is neither factually nor legally supportable and should be reversed. It is incorrect that nearby neighbors/interested parties are in total opposition to extended hours. I am aware of only two individuals who have expressed opposition to the extended hour - John Plyler and Susie Benz.<sup>1</sup> Mr. Plyler lives at 1022 East 7<sup>th</sup> Street. However, his immediate neighbors all support Cheer Up Charlies' extended hours. Agreements from these five neighbors are attached. The attached map shows where these individuals live in relation to Cheer Up Charlies.

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<sup>1</sup>Matt Parkerson has informed me that seven individuals are in opposition to the extended hours but has shared their names with me.

As the map and attached agreements show, Cheer Up Charlies has sufficient support from owners and tenants of nearby properties. Thus, factor (i) would favor granting Cheer Up Charlies' application for extended hours. The stated basis for the City's decision - "total opposition" to the extended hours - is factually incorrect, and the decision to deny extended hours should be overruled on appeal.

Factor (ii) was improperly relied upon by the City in denying Cheer Up Charlies application for extended hours. There are fourteen neighborhood organizations/community groups in Cheer Up Charlies' neighborhood. Only two of them oppose the extended hours. Thus, factor (ii) is not a proper basis for denying the extended hours.

Factor (iii) favors granting the application for extended hours. Cheer Up Charlies has only had one warning and one citation for playing music past cut off time. On the other hand, Cheer Up Charlies has spent at least \$18,000 on directional speakers for sound mitigation and over \$10,000 on a Danstand to prevent sound from impacting neighbors. The City recognized this in its decision to deny the extended hours stating that "the venue no longer creates a substantial sound impact to their neighbors." As there is no substantial sound impact, there is no basis for not granting the extended hours.

Factor (iv) also weighs in favor of granting the application for extended hours. The entire block on which Cheer Up Charlies is located is zoned as Transit Oriented Development, not residential.

In addition to the factual errors that merit overturning the City's decision, the Ordinance itself is unconstitutionally vague and, thus, unenforceable because it violates my Constitutional right to due process. Preventing live music between the hours of 10:00 p.m. and midnight on Friday and Saturday constitutes a taking as over 50% of my sales revenue on Friday and Saturday is generated during those hours. "Nearby property" and "affected neighborhood organizations" are not defined in Ordinance 9-2-1 Definitions. As a result, business owners are unable to understand what they must do to extend their music hours. Such a law violates the U.S. Constitution's right to due process. A law violates due process "if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits." *Hill v. Colorado*, 530 U.S. 703, 732 (2000). A law is also unconstitutionally vague "if it authorizes or even encourages arbitrary and discriminatory enforcement." *Id.* In this case, failing to define "nearby property" and "affected neighborhood organizations" prevents objective enforcement of city ordinances and authorizes arbitrary enforcement by the City of Austin.

Because Cheer Up Charlies' application for extended music hours is supported by agreements from owners and tenants of nearby properties and affected neighborhood organizations and the

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Cheer Up Charlies  
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relevant ordinance is unconstitutionally vague, Cheer Up Charlies' application for extended music hours should be granted.


Sincerely,

A handwritten signature in black ink, appearing to read 'Tamara Hoover', with a stylized, looping flourish at the end.

Tamara Hoover  
Owner, Cheer Up Charlies

**Agreement Regarding Cheer Up Charlies Application for Extended Music Hours**

I, ORLANDO ANDRADE, am an owner/tenant, of 1010 E  
7th St #A. This is an agreement between  
me and Cheer Up Charlies that Cheer Up Charlies can play music until 12:00 midnight on Friday  
and Saturday and 10:00 p.m. on Sunday through Thursday.

  
(Signature)

8/30/12  
(Date)

**Agreement Regarding Cheer Up Charlies Application for Extended Music Hours**

I, Braslio Quintanilla am an owner/tenant, of Tennent  
1221 E. 6TH ST. . This is an agreement between

me and Cheer Up Charlies that Cheer Up Charlies can play music until 12:00 midnight on Friday  
and Saturday and 10:00 p.m. on Sunday through Thursday.

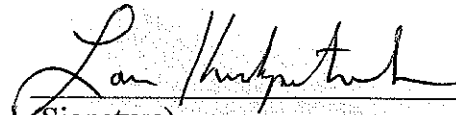
Braslio Quintanilla  
(Signature)

8-30-2012  
(Date)

**Agreement Regarding Cheer Up Charlies Application for Extended Music Hours**

I, LOREN KIRKPATRICK, am an owner/tenant, of 1101 E. 8<sup>th</sup> 78302

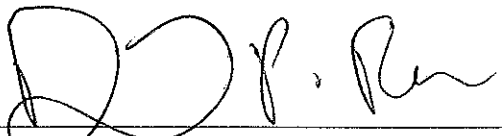
\_\_\_\_\_. This is an agreement between  
me and Cheer Up Charlies that Cheer Up Charlies can play music until 12:00 midnight on Friday  
and Saturday and 10:00 p.m. on Sunday through Thursday.

  
(Signature)

08/30/2012  
(Date)

**Agreement Regarding Cheer Up Charlies Application for Extended Music Hours**

I, David P. Ross, am an owner/tenant of 1101 E. 8<sup>th</sup>  
St., Austin, TX 78702. This is an agreement between  
me and Cheer Up Charlies that Cheer Up Charlies can play music until 12:00 midnight on Friday  
and Saturday and 10:00 p.m. on Sunday through Thursday.

  
(Signature)

8/30/2012  
(Date)

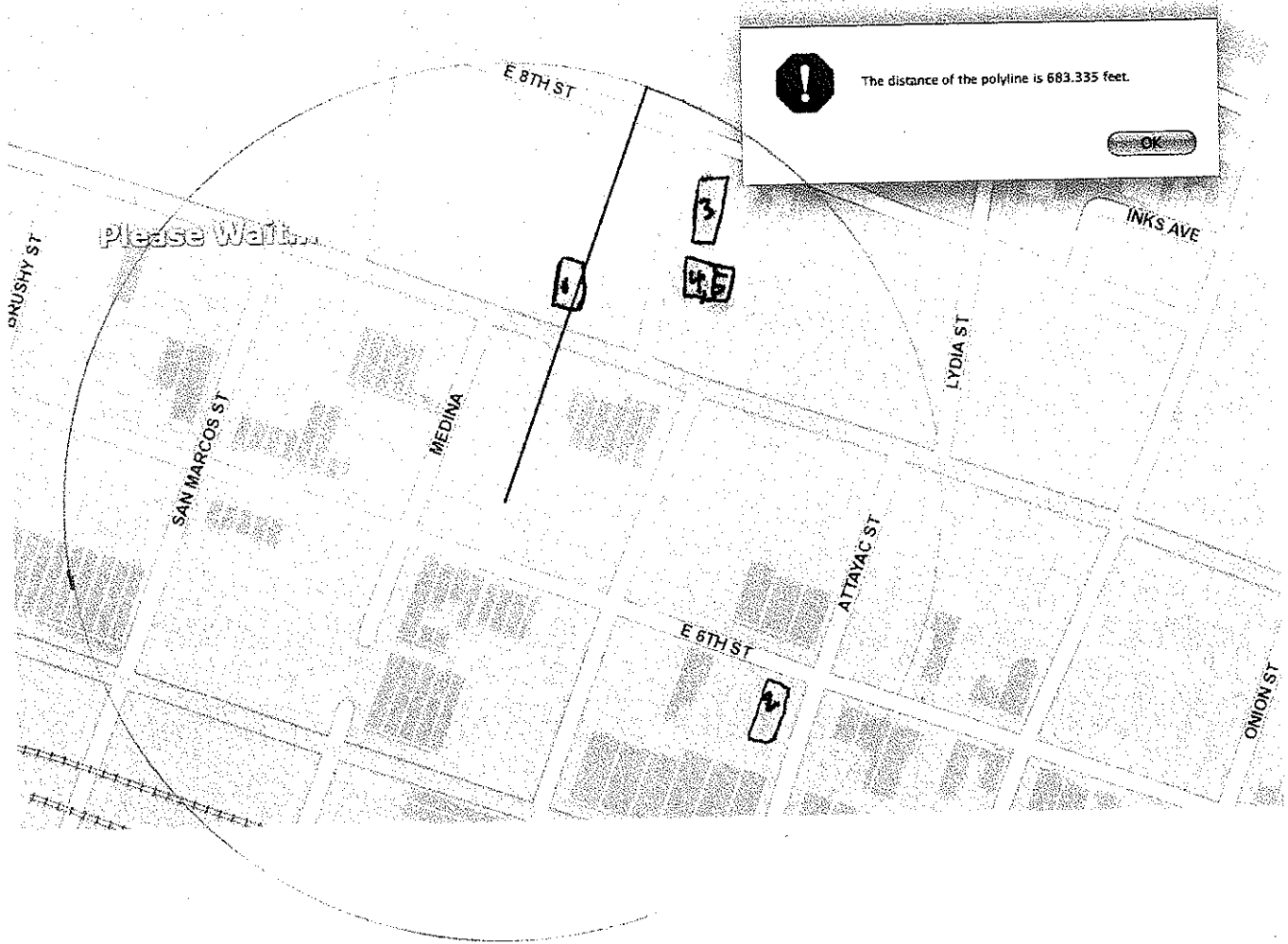


**Agreement Regarding Cheer Up Charlies Application for Extended Music Hours**

I, Andrew Beroyed, am an owner/tenant, of 1100 East 8th Street, Austin, TX 78702. This is an agreement between me and Cheer Up Charlies that Cheer Up Charlies can play music until 12:00 midnight on Friday and Saturday and 10:00 p.m. on Sunday through Thursday.

Cathy H. Bump  
(Signature)

8/30/12  
(Date)



The distance of the polyline is 683.335 feet.

OK