ORDINANCE NO.

AN ORDINANCE RELATED TO REQUIREMENTS FOR OUTDOOR MUSIC VENUES; AMENDING CITY CODE SECTIONS 9-2-1, 9-2-12, 9-2-21, 9-2-23, 9-2-25, AND 9-2-32; ADDING NEW CITY CODE SECTIONS 9-2-26 AND 9-2-27; AND PROVIDING FOR EMERGENCY PASSAGE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Section 9-2-1 (*Definitions*) is amended to add the following new definition and to renumber the remaining definitions accordingly:

(5) ACCOUNTABLE OFFICIAL means the City officer or employee designated by the city manager with a particular administrative or enforcement responsibility under this chapter.

PART 2. Subsection (A) of City Code Section 9-2-12 (*Permit for an Outdoor Music Venue*) is amended to read:

(A) The owner or operator of an outdoor music venue must obtain a permit from the accountable official [~~director~~] before using sound equipment at an outdoor music venue.

PART 3. City Code Section 9-2-21 (*Application Procedure*) is amended to add a new Subsection (E) to read:

(E) An application for an outdoor music permit under Section 9-2-12 (*Permit for an Outdoor Music Venue*) must include:

(1) any information, that is consistent with Council direction, required by the accountable official, who may adopt rules establishing requirements for an application; and

(2) a certified list of all property owners entitled to notice under Section 9-2-21, if the county tax appraisal district maintains ownership records on an automated data base that is not accessible by the City.

PART 4. City Code Section 9-2-23 (*Permit Issuance and Administrative Authority*) is amended to read:

§ 9-2-23 PERMIT ISSUANCE AND ADMINISTRATIVE AUTHORITY.

(A) Except as provided in Subsection (B), the [~~The~~] director shall issue a permit to a person who submits an application meeting the application requirements under this article and pays the application fee. The director may adopt administrative rules to implement the requirements of this article in accordance with Chapter 2-1 (*Administrative Rules*).

(B) The accountable official shall review an application for an outdoor music venue under the requirements of this subsection if any property owner or organization is entitled to notice of the application under Subsection 9-2-26(A) (*Notification Requirements for Outdoor Music Venues*).

(1) Except as provided in Subsection (B)(3), the accountable official shall approve or deny an application for an outdoor music venue based on the following criteria:

(a) proximity of the proposed outdoor music venue to existing land uses, including consideration of the date on which the venue was originally permitted relative to surrounding land uses;

(b) the size and capacity of the outdoor music venue;

(c) sound mitigation to be provided by the operator of the outdoor music venue, including but not limited to building design, landscaping, and buffering;

(d) additional limitations on the hours during which sound equipment may be operated, beyond the limits required under Section 9-2-12 (*Permit for an Outdoor Music Venue*); and

(e) the history of noise complaints regarding the outdoor music venue as verified by the chief of police or the accountable official

(2) In approving an application under this section, the accountable official may mitigate adverse negative impacts by imposing conditions deemed necessary to protect the health and safety of residents living in single-family residential or multi-family properties in the vicinity of the proposed outdoor music venue.

(3) The accountable official may not deny an initial permit for an outdoor music venue located within the footprint of a restaurant (general) use under Section 25-2-808 (*Restaurants and Cocktail Lounges*), but the accountable official may:

(a) impose conditions on the permit, as provided in Subsection (B)(2) of this section; and

(b) deny an application to renew the permit under Section 9-2-32 (*Denial of Permit for Repeated Offenses*) based on repeated violation of applicable decibel limits.

(4) A decision under this subsection must:

(a) be in writing;

(b) include findings in support of the decision;

(c) describe conditions of approval, if any; and

(d) be mailed to the applicant and any interested party within three days after the decision is issued, per the requirements of Section 9-2-26 (*Notification Requirements for an Outdoor Music Venue*).

(5) The accountable official may not issue a decision under this subsection earlier than the 14th day after the date that notice of the application is provided under Section 9-2-26 (*Notification Requirements for an Outdoor Music Venue*).

PART 5. City Code Section 9-2-25 (*Appeal of Denial of Permit Application*) is amended to read:

§ 9-2-25 APPEAL OF ADMINISTRATIVE DECISION ON A [~~DENIAL OF~~] PERMIT APPLICATION.

(A) If the director denies an application for a sound permit under this chapter, other than a permit for an outdoor music venue, an applicant may appeal the director's decision to the city manager under the requirements of this subsection.

(1) An appeal must be filed with the city manager, in writing, [~~(B) The appeal must: (1) be filed with the city manager~~] no later than the 10th day after the date the decision is rendered[~~;~~] and must describe [~~(2) include a written statement of~~] the decision being appealed and the specific grounds for the appeal.

(2) [~~(C)~~] No later than the 30th day after receiving a request for an appeal, the city manager shall schedule a hearing to consider the appeal.

(3)[~~(D)~~] The city manager may sustain, reverse, or modify the action appealed. The city manager's decision is final.

(B) Except as provided in Subsection (B)(3) of this section, an applicant or an interested party may appeal a decision by the accountable official on an application for an outdoor music permit under Subsection 9-2-23(B) (*Permit Issuance and Administrative Authority*) to the city council in accordance with the following requirements.

(1) An appeal must be filed with the accountable official, in writing, no later than the 14th day after the date the decision is issued and must describe the decision being appealed and the specific grounds for the appeal.

(2) A public hearing on the appeal shall be held at the earliest council meeting for which notice may reasonably be provided, or as otherwise agreed to by the parties. In deciding an appeal, the city council may uphold, reverse, or modify a decision of the accountable official.

(3) A neighborhood organization may not appeal a decision on an application for an outdoor music venue to be located within the following boundaries:

- Eastern boundary: I-35;
- Southern boundary: the northern shore of Lady Bird Lake;
- Western boundary: north along the eastern shore of Shoal Creek, north along West Avenue to 7th Street, east along 7th Street to Lavaca Boulevard, north along Lavaca Boulevard to 11th Street; and
- Northern boundary: 11th Street.

PART 6. City Code Chapter 9-2 (*Noise and Amplified Sound*) is amended to add a new Section 9-2-26 (*Notification Requirements for an Outdoor Music Venue*) to read:

§ 9-2-26 NOTIFICATION REQUIREMENTS FOR AN OUTDOOR MUSIC VENUE.

(A) Not later than the 14th day after receiving an application for a new permit or permit renewal under Section 9-2-12 (*Permit for an Outdoor Music Venue*), the accountable official shall provide notice in accordance with the following requirements:

(1) If the application is for a renewal permit, notice shall be mailed to:

(a) applicant;

(b) notice owner of a single-family use located within 600 feet of the proposed outdoor music venue; and

(c) registered neighborhood organization whose declared boundaries are within 600 feet of the proposed outdoor music venue.

(2) If the application is for a new permit, notice shall be mailed to:

(a) an individual or organization entitled to notice under Subsection (A)(1) of this section; and

(b) the notice owner of a multi-family use located adjacent to the proposed outdoor music venue.

(B) Notice required under this section must:

(1) describe the general nature of the application;

(2) identify the applicant and the location of the site;

(3) generally describe the proposed development;

(4) identify the entity that may approve the application;

(5) state the earliest date that action under a decision may occur;

(6) describe the procedure and requirements for becoming an interested party;

(7) describe the procedure for an appeal; and

(8) include the address and telephone number of the accountable official from whom additional information may be obtained.

(C) Notice required under this section is effective on the date a letter is deposited in a depository of the U.S. Post Office, postage paid, and addressed to:

(1) to an applicant, by mailing notice to the property owner or agent at the address shown on the application or on a written change of address form filed with the responsible director or building official;

(2) a notice owner of real property, by mailing notice to the owner shown on the records of the county tax appraisal district;

(3) a record owner of real property, by mailing notice to the owner at the street address of the property or, if the property does not have a street address, to the return address shown on the deed; and

(4) a neighborhood or environmental organization, by mailing notice to the agent or officer of the organization at the mailing address specified in the City's community registry.

(D) Notice by hand delivery may be substituted for notice by mail if the addressee provides a receipt of delivery.

(E) A list of property owners entitled to notice under Subsection (A) shall be provided by:

(1) the accountable official; or

(2) the applicant, as required under Section 9-2-21(E)(2), if the county tax appraisal district maintains ownership records on an automated database that is not accessible by the City.

PART 7. City Code Chapter 9-2 (*Noise and Amplified Sound*) is amended to add a new Section 9-2-27 (*Interested Parties for an Outdoor Music Venue*) to read:

§ 9-2-27 INTERESTED PARTIES FOR AN OUTDOOR MUSIC VENUE.

(A) Except as provided in subsection (B), A person is an interested party for purposes of appeal under Subsection 9-2-25(B) (*Appeal of Administrative Decision on a Permit Application*) if the person:

(1) is the applicant or the record owner of a proposed outdoor music venue for which approval is required under Subsection 9-2-23(B) (*Permit Issuance and Administrative Authority*); or

(2) communicates an interest in a proposed outdoor music venue for which approval is required under Subsection 9-2-23(B) (*Permit Issuance and Administrative Authority*); and is:

(a) an individual entitled to notice under Section 9-2-26 (*Notice Requirements for Outdoor Music Venues*); or

(b) a representative of a neighborhood organization entitled to notice under Section 9-2-26 (*Notice Requirements for Outdoor Music Venues*).

(B) A person communicates an interest in a proposed outdoor music venue for purposes of Subsection(A)(2) of this section by delivering a written

statement to the accountable official or by making telephone contact with the accountable official. The communication must:

(1) generally identify the issues of concern;

(2) include the person's name, telephone phone number, and mailing address;

(3) be delivered before the earliest date on which action on the application may occur under Subsection 9-2-23(B) (*Permit Issuance and Administrative Authority*); and

(4) if the communication is by telephone, be confirmed in writing not later than seven days after the earliest date on which action on the application may occur under Subsection 9-2-23(B) (*Permit Issuance and Administrative Authority*).

(C) The accountable official shall notify an applicant in writing if there is an interested party for an outdoor music venue.

PART 8. City Code Section 9-2-32 (*Denial of Permit for Repeated Offenses*) is amended to read:

§ 9-2-32 DENIAL OF PERMIT FOR REPEATED OFFENSES.

The accountable official may refuse to issue a permit to a permittee or to renew an existing permit if:

(1) the permittee is convicted of more than two violations of a permit issued under this chapter; or

(2) the property where the sound equipment will be used is the location of more than two violations of a permit issued under this chapter.

PART 9. DECLARATION OF EMERGENCY; EFFECTIVE DATE.

1. Based on the findings set forth in Part 1 of Ordinance No. 20090115-055, the Council finds that confusion regarding the requirements applicable to outdoor music venues negatively affects citizens of the City of Austin, as well as restaurant and club owners.

2. The Council further finds that these circumstances constitute an emergency. Because of the emergency, this ordinance takes effect immediately on its passage for the immediate preservation of the public peace, health, and safety.

PART 10. ONE-YEAR REVIEW.

The City Manager is directed to monitor the impact of this ordinance on the permitting process for outdoor music venues, including but not limited to: review times, cost of public notice, and any complaints received from venue operators or neighbors, as well as the overall number of applications for outdoor music venues approved and denied following adoption of the ordinance. The City Manager shall report to Council on the impacts of the ordinance approximately one year after the effective date of the ordinance.

PASSED AND APPROVED

_____, 2009 § _____
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Will Wynn
Mayor

APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk