



MEMORANDUM

TO: Mayor and City Council

FROM: Kevin Johns, Director
Economic Development Department

DATE: June 1, 2017

SUBJECT: Agent of Change and Outdoor Music Permitting Policy Recommendations

The purpose of this memo is to provide you an overview of the proposed policy recommendations scheduled for City Council consideration on June 15, 2017 to support our local music industry.

The **agent of change** is a policy proposal that focuses on compatibility between outdoor music venues and residential and hotel development. The policy would require the new use moving into the area, to be responsible for compatibility related to sound, and to build accordingly to manage the sound impact. It would also require disclosure when the property is leased or sold so new owners and residents understand the existing sound environment.

The **outdoor music venue permit** is currently part of our City Code and will continue to be used. The recommendations associated with this permit streamlining of the sound-related sections of the City Code make it easier to interpret and enforce serves as the trigger for the Agent of Change requirements.

History

There are several City Council resolutions that highlighted these policy objectives. In 2011, Council Resolution 20111215-060 directed staff to develop building standards to address sound mitigation for construction of new residential and other overnight uses in the downtown area. In August 2013, City Council did not approve staff recommendations in response to that resolution, which called for the use of laminate glass on building over five stories in height. A staff memo dated July 17, 2015 in response to Council Resolution 20140925-081 highlighted the need for consistent enforcement of the sound ordinance and to streamline permitting processes required of music venues. Finally, the staff response to Council Resolution 20160303-019 included recommendations associated with both the agent of change policy and the music venue permitting, listing both as priority items to address critical short- and long-term concerns.

Starting in July 2016, staff conducted extensive research into both areas and then presented draft recommendations for public comment during January and February 2017. Over 15 meetings were held with stakeholders groups including the Downtown Austin Alliance, the Real Estate Council of Austin, the Texas Restaurant Association, the Urban Land Institute, and numerous neighborhood associations. City staff also hosted two open house meetings and three venue owner/operator meetings to gather feedback.

Highlights of Recommended Policy Changes

While the following recommended changes are necessary for implementation of the proposed policies, not all require amendments to the City Code. Those items that require such amendment are noted with an asterisk (*).

- **Acknowledgement:**
 - When a property owner submits a development application for a project that has a residential or hotel component they must acknowledge the proximity of licensed entertainment venues within 600' of the project and commit to building standards that mitigate the existing sound conditions for future development residents and patrons.
 - When a property owner submits a development application for a project that includes an outdoor music venue they must acknowledge the proximity of residential uses with 600' of the project and commit to building or tech standards that mitigate the potential sound conditions for area residents.
- **Education** - City staff will provide an after-hours sound level report for all applicable development projects and research and make available best practices in sound mitigation construction practices.
- **Disclosure*** - When a property owner sells or leases a property that required the above referenced acknowledgement, the seller must disclose to the lessee or buyer the proximity of the nearby residential, hotel or licensed venue.
- **Clarification*, Streamlining, Relationship Building** – The section of the City Code addressing the entertainment license is clearer and easier to interpret. All functions associated with the issuance of the license will be handled by the Music Office, instead of involving two separate City Departments. This also allows the Music Office to gain a better understanding of the music venue and provide enhanced support and advocacy.
- **Term*** – The outdoor music venue permit term is extended to two years, saving venues time and money and better allocating staff resources to proactively engage with venues and address identified issues.
- **Appeals*** – Policy and parameters for outdoor music venues will be adopted by City Council. To promote consistent administration of City Council policy, appeals from venues and interested parties will be submitted to the City Manager.
- **Preliminary Hearing*** – Prior to an outdoor music venue permit being suspended or revoked, venues will receive a preliminary hearing.

While the draft ordinance, attached to this memo, represents a substantial improvement to the current processes associated with sound monitoring and enforcement, certain key aspects would remain **unchanged**. They include:

- **Indoor Venues** – Indoor venues are not currently permitted and they will not need to obtain an outdoor music venue permit.
- **Sound Levels/Cut Off Times** – The maximum sound levels and cut off times for outdoor live music will remain the same. Staff retains the ability to further limit sound levels and cut off times and include a maximum dBC level in individual sound impact plans.
- **Interested Party** – An interested party for purposes of notification and appeal will remain as a single-family resident, an adjacent multi-family use or neighborhood organization within 600 feet of an entertainment venue.
- **Notification Process/Appeals** – Mail out notification to interested parties is required when a venue license is being issued or renewed. Interested parties may still appeal the decision to grant a license.
- **Good Neighbor Policy** – Entertainment venues are still required to comply with the good neighbor policy that promotes good business practices and fosters good relationships with adjacent neighbors.
- **Suspension and Revocation** – City staff retains the ability to suspend an entertainment license if a venue receives four violations within a 45 day period, and revoke a license for additional violations during a suspension.

The recommendations referenced were presented to various boards and commissions during the month of May. Below is a summary of actions taken by each Council-appointed body:

- On May 1, the **Music Commission** unanimously support the recommendations, requesting additional research on notification requirements and pending review of the draft ordinance.
- On May 15, the **Arts Commission** unanimously supported the Music Commissions action and ongoing process for City Council consideration of the staff recommendations.

- On May 17, the Downtown Commission supported the recommendations, with an amendment to include hotels within development acknowledgement and disclosure requirements (vote 8-0-1).
- On May 22, the Design Commission supported the recommendations with the inclusion of hotels within the development acknowledgement, along with disclosure of music venue proximity to hotel patrons (vote 7-2-0).

Additionally, staff researched the notification requirements associated with particular state-issued environmental permits, as requested by the Music Commission. The research indicated that in cases where existing conditions associated with the initial permit remain unchanged, interested parties are still notified but the state commission does not accept public comments. Staff does not support this change and recommends the continued acceptance of comments and appeal requests from interested parties during the outdoor music permit issuance and renewal processes. However, staff does support and has incorporated the inclusion of hotels within the acknowledgement and disclosure requirements associated with the agent of change policy. While our initial focus was on addressing compatibility between new residential developments and music venues, staff is committed to extending the proposed levels of engagement and feedback to new hotel/motel developments.

Here are the upcoming dates related to these policy changes:

- June 15, 2017 – City Council consideration of staff recommendations
- September 1, 2017 – Ordinance effective date

The recommendations proposed for City Council consideration represent a balanced approach to addressing critical issues that have surfaced over years, and which Council has asked staff for recommendations. We believe that adoption of these recommendations will promote clarity in the City Code, create efficiencies, support the music ecosystem, and maintain our commitment to compatibility between music venues and residents.

Additional Efforts Going Forward

Previous staff descriptions of an entertainment license also included the potential for economic incentives for venues that serve within different tiers of the local music ecosystem. The potential for economic incentives for music venues is still being explored as part of the Chapter 380 policy review (per City Council Resolution 20170302-034) (next week at 7-focus group sessions), but not recommended as a part of the outdoor music venue permit. The permit remains regulatory in nature and does not include an investment and/or job creation requirement. Additional specific areas that require further research, stakeholder engagement, and potential City Council action were also identified. Among these were the need to adopt rules associated with the good neighbor policy, addressing the impact of low-frequency, or dBC levels, and the applicability of the permitting requirement for indoor venues. Below is the timeline for the completion of the additional research and associated community engagement

- June 2018 – Complete rules process associated with good neighbor policy
- June 2018 – Complete research and public engagement process to best define the benefits and challenges associated with a city-wide dBC limit and forward any recommended changes for City Council consideration
- June 2019 – Complete research and public engagement process to determine whether indoor venues should be required to secure a music permit and forward for City Council consideration

Please feel free to contact me at (512) 974-7802 or Alex Lopez at (512) 974-2343 if we can provide any additional information or would like to discuss any of these items in more detail.

ATTACHMENT – Draft Ordinance

xc: Elaine Hart, Interim City Manager
 Greg Canally, Interim Chief Financial Officer
 Alex Lopez, Deputy Director, Economic Development Department

ORDINANCE NO. _____

1 AN ORDINANCE REPEALING AND REPLACING CITY CODE CHAPTER 9-2
2 RELATING TO NOISE AND SOUND; AMENDING CITY CODE TITLE 4 TO
3 ADD CHAPTER 4-20 RELATING SOUND PERMITS; AND CREATING
4 OFFENSES AND ESTABLISHING PENALTIES.

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

6 PART 1. Chapter 9-2 (*Noise and Amplified Sound*) of the City Code is repealed
7 and replaced to read as follows:

8 CHAPTER 9-2 NOISE

9 ARTICLE 1. GENERAL PROVISIONS

10 § 9-2-1 DEFINITIONS.

11 In this chapter:

- 12 (1) DECIBEL means sound pressure levels as measured by a sound level
13 meter using the “A” weighing network, the “C” weighing network, or
14 the slow or fast meter response as specified by the American National
15 Standards Institute.
- 16 (2) NOISE means sound which
17 (a) disturbs a reasonable person of normal sensibilities; or
18 (b) is louder than permitted by this chapter.
- 19 (3) SOUND EQUIPMENT means a loud speaker, microphone, public
20 address system, amplification system, turntable, or other similar
21 digital or analog device.
- 22 (4) WATERCRAFT means a boat or other structure designed to float on
23 water.

24 § 9-2-2 APPLICABILITY.

25 This chapter does not apply to:

- 26 (1) an employee of a governmental entity engaged in the employee’s
27 official duty;
- 28 (2) a person operating a bell for religious activity;

- 1 (3) a person operating an authorized emergency vehicle, as defined in
- 2 Texas Transportation Code Section 541.201; or
- 3 (4) a person operating an audible warning device on a vehicle or train as
- 4 required by state law.

5 **§ 9-2-3 RESTRICTIONS.**

6 (A) A person may not:

- 7 (1) operate, or allow another to operate, sound equipment that exceeds 85
- 8 decibels when measured at the property line;
- 9 (2) operate or allow another to operate sound equipment in a watercraft
- 10 that is audible or causes vibrations 100 feet from the watercraft;
- 11 (3) operate or allow another to operate a machine that separates, gathers,
- 12 grades, loads, or unloads sand, rock, or gravel within 600 feet of a
- 13 residence, church, hospital, hotel, or motel between 7:00 p.m. and
- 14 6:00 a.m., except for the installation of concrete as authorized under
- 15 Section 4-20-20 (*Permit for Concrete Installation During Non-Peak*
- 16 *Hour Periods*); or
- 17 (4) use or allow another to use a vehicle, equipment, attachment, or
- 18 device associated with a vehicle, for cold hold, refrigeration, or
- 19 freezing of any consumable food or beverages product, including
- 20 water in any form such as consumer ice or ice used to refrigerate food
- 21 or beverage, between 7:00 p.m. and 6:00 a.m. if noise or sound
- 22 originating from the vehicle or any associated equipment is audible or
- 23 causes vibration at a residence.

24 (B) A person may not operate or allow another to operate sound equipment at a

25 residence that:

- 26 (1) is audible beyond the property line between 10:00 p.m. and 10:00
- 27 a.m.; or
- 28 (2) exceeds 75 decibels measured at the property line.

29 (C) Unless a person obtains the applicable permit required in Chapter 4-20

30 (*Sound Permits*), a person may not

- 31 (1) make or allow another to make noise or play a musical instrument
- 32 audible to an adjacent business or residence between 10:30 p.m. and
- 33 7:00 a.m.;

- 1 (2) operate or allow another to operate sound equipment that causes
2 vibrations to an adjacent business or residence between 10:30 p.m.
3 and 7:00 a.m.; or
- 4 (3) operate or allow another to operate sound equipment in a vehicle that
5 is audible or causes vibrations 30 feet from the vehicle.
- 6 (D) A person may not operate, or allow another to operate, sound equipment at a
7 business that is audible at the property line between 2:00 a.m. and 10:00
8 a.m..
- 9
- 10 (E) It is an affirmative defense to a violation of Subsection (A), (B), or (C) that:
- 11 (1) the audible sound or vibration occurred when the vehicle or associated
12 equipment or device was being actively loaded, unloaded, or serviced
13 in a manner that complied with all applicable codes, ordinances, and
14 regulations;
- 15 (2) the audible sound or vibration:
- 16 (a) occurred when the use of the vehicle or associated equipment or
17 device occurred for a period of 48 hours or less on or adjacent
18 to the premises of a business licensed by Austin Public Health
19 to prepare, serve, or sell consumable food or beverage items;
- 20 (b) occurred when a documented emergency at the licensed
21 premises prevented or compromised the compliant operation of
22 equipment necessary for food safety; and
- 23 (c) that the use was the minimum necessary for the licensee to
24 achieve or maintain temporary cold hold, refrigeration, or
25 freezing of potential hazardous food products; or
- 26 (3) at least 48 hours in advance of the alleged conduct:
- 27 (a) the person charged obtained consent to the noise or vibration, as
28 described in this chapter, from at least one adult resident of
29 each affected dwelling unit located on a premises within 600
30 feet of the location where the vibration or sound was apparent;
31 and
- 32 (b) consent was provided in writing, on a form approved by the
33 City.
- 34 (F) In this section, a documented emergency includes an equipment or utility
35 failure or malfunction.

1 **§ 9-2-4 RULES.**

2 The City Manager may adopt rules under Chapter 1-2 (*Adoption of Rules*) to
3 implement, administer or enforce this chapter.

4 **§ 9-2-5 OFFENSES.**

- 5 (A) A person commits an offense if the person fails to comply with this chapter.
- 6 (B) An offense under this chapter is a Class C misdemeanor.
- 7 (C) An offense under this chapter is punishable as set forth in Section 1-1-99
8 (*Offenses; General Penalty*).
- 9 (D) Each occurrence of a violation of this chapter is separate offense.
- 10 (E) A culpable mental state is not required for the commission of an offense
11 under this chapter, and need not be proved.
- 12 (F) A violation of this chapter is a nuisance. A criminal prosecution under this
13 chapter does not limit the City’s right to abate the nuisance, including the
14 use of injunctive relief.

15 **PART 2.** Title 4 of the City Code is amended to add Chapter 4-20 (*Sound Permits*) to
16 read as follows:

17 **CHAPTER 4-20 SOUND PERMITS**

18 ***ARTICLE 1. GENERAL PROVISIONS.***

19 **§ 4-20-1 DEFINITIONS.**

20 In this chapter:

- 21 (1) **ACCOUNTABLE OFFICIAL** means the City officer or employee
22 designated by the City Manager with a particular administrative or
23 enforcement responsibility under this chapter.
- 24 (2) **AMPLIFIED SOUND** means voice, instruments, or other sound that
25 is made louder using sound equipment.
- 26 (3) **DECIBEL** means sound pressure levels as measured by a sound level
27 meter using the “A” weighing network, the “C” weighting network, or
28 the slow or fast meter response as specified by the American National
29 Standards Institute.

- 1 (4) GOOD NEIGHBOR POLICY means good business practices required
2 as a condition of an amplified sound permit issued under this chapter.
- 3 (5) INTERESTED PARTY means a registered neighborhood
4 organization whose declared boundaries are within 600 feet of the
5 premises included in the application; an individual who is the notice
6 owner of a single-family use located within 600 feet of the premises
7 included in the application; or multi-family use located adjacent to the
8 premises included in the application.
- 9 (6) OUTDOOR VENUE means a non-residential premises where
10 amplified sound occurs but not within a fully enclosed structure. A
11 structure is fully enclosed when it has permanent solid walls and a
12 roof. A wall is not solid if part of the wall is comprised of operable
13 openings, such as overhead doors, sliding windows or doors, swinging
14 windows or doors, folding or accordion style windows, or wall
15 systems in a cumulative area greater than 50 square feet
- 16 (7) PREMISES means real property and any improvements on the real
17 property.
- 18 (8) RESIDENTIAL PREMISES means a premises zoned and used as
19 residential.
- 20 (9) RESPONSIBLE PERSON means a sound engineer, audio
21 professional, or other person authorized to make decisions regarding
22 the operation of sound equipment pursuant to a permit issued under
23 this chapter.
- 24 (10) SIXTH STREET DISTRICT means the area:
- 25 (a) that begins at the intersection of IH-35 and Fifth Street (East);
26 (b) north along IH-35 to the intersection of Seventh Street (East);
27 (c) west along Seventh Street (East) to Congress Avenue;
28 (d) south along Congress Avenue to Fifth Street (East);
29 (e) east along Fifth Street (East) to IH-35, the place beginning.
- 30 (11) SOUND EQUIPMENT means a microphone, public address system,
31 turntable, or other similar digital or analog device.
- 32 (12) SPRING FESTIVAL SEASON means the Friday of the second week
33 of March through Sunday during the third week of March, unless the

1 City Manager designates an alternate ten-day period for a particular
2 year.

3 (13) TEMPORARY CHANGE OF USE means a permit issued by the
4 accountable official that authorizes a temporary increase in occupancy
5 levels for a particular premises or structure.

6 (14) TEMPORARY EVENT means an event that lasts no more than four
7 consecutive or non-consecutive days during a 30 day period and
8 requires a temporary change of use, temporary use permit, or
9 temporary closure of a right-of-way.

10 (15) TEMPORARY USE PERMIT means a permit issued by the Planning
11 and Zoning Department under Chapter 25-2, Article 6 (*Temporary*
12 *Uses*) to authorize a temporary activity not otherwise permitted in a
13 base zoning district.

14 (16) WAREHOUSE DISTRICT means the area:

15 (a) that begins at the intersection of Congress Avenue and Cesar
16 Chavez Street;

17 (b) north along Congress Avenue to Fifth Street (West);

18 (c) west along Fifth Street (West) to Guadalupe Street;

19 (d) south along Guadalupe Street to Cesar Chavez Street; and

20 (e) east along Cesar Chavez Street to Congress Avenue, the place
21 of beginning.

22 **§ 4-20-2 PERMIT REQUIRED.**

23 (A) A person must obtain a permit to deliver, finish, place, or pour concrete
24 between 7:00 p.m. and 6:00 a.m. in the Central Business District (CBD) base
25 zoning district at property located within 600 feet of a residence, church,
26 hospital, hotel, or motel.

27 (B) A person must obtain a permit to operate sound equipment attached to or
28 mounted on a vehicle.

29 (C) A person must obtain a permit to operate sound equipment at a temporary
30 event.

31 (D) Except as provided in Subsection (F), a person must obtain a permit to
32 operate an outdoor venue.

- 1 (E) An outdoor venue permit is valid for two years from the date it is issued.
- 2 (F) An outdoor music venue permit that it is not suspended or revoked and was
3 issued between:
- 4 (1) January 1, 2017 and January 31, 2017, satisfies the requirement in
5 Subsection (D) until May 1, 2019; or
- 6 (2) February 1, 2017 and March 1, 2017, satisfies the requirement in
7 Subsection (D) until June 1, 2019; or
- 8 (3) March 2, 2017 and March 31, 2017, satisfies the requirement in
9 Subsection (D) until July 1, 2019; or
- 10 (4) April 1, 2017 and May 31, 2017, satisfies the requirement in
11 Subsection (D) until August 1, 2019; or
- 12 (5) June 1, 2017 and July 31, 2017, satisfies the requirement in
13 Subsection (D) until October 1, 2019; or
- 14 (6) August 1, 2017 and August 31, 2017, satisfies the requirement in
15 Subsection (D) until November 1, 2019.
- 16 (G) For purposes of this section, an outdoor music venue permit means a permit
17 issued before the effective date of this section that allowed the use of sound
18 equipment for outdoor music that involves the amplification of sound from
19 instruments, vocal and instrument microphones, turntables, and digital or
20 analog devices used as part of a performance requiring human operation
21 from song to song.

22 **§ 4-20-3 NON-TRANSFERABLE.**

23 A permit issued under this chapter may not be transferred by the property owner or
24 operator listed on the application and does not convey with a sale or transfer of the
25 property.

26 **§ 4-20-4 MEASURING SOUND LEVELS.**

27 The decibel limits prescribed under this chapter must be measured by a decibel
28 meter approved by the Music Office.

29 **§ 4-20-5 FEES REQUIRED.**

- 30 (A) An applicant must pay an application fee set by separate ordinance.
- 31 (B) Unless the accountable official requires the applicant to mail notice, an
32 applicant must pay a notification fee set by separate ordinance.

- 1 (C) An applicant must pay a sound impact plan review fee set by separate
2 ordinance.

3 **§ 4-20-6 ADMINISTRATIVE RULES.**

4 The accountable official may adopt rules in accordance with Chapter 1-2
5 (*Administrative Rules*) to administer and implement this chapter.

6 **§ 4-20-7 ADMINISTRATIVE APPEALS.**

- 7 (A) If the accountable official denies an application for an approval described in
8 Section 4-20-2 (*Permit Required*) an applicant may appeal the decision to
9 the City Manager.
- 10 (B) An interested party may appeal a decision to grant an application for a
11 permit issued pursuant to Article 3 (*Amplified Sound*) of this chapter.
- 12 (C) An appeal must be submitted to the City Manager, in writing, within 10 days
13 from the date the decision is issued and must describe the decision being
14 appealed and the grounds for the appeal.
- 15 (D) The City Manager must make a decision within 30 days from the date the
16 appeal is submitted to the City Manager.
- 17 (E) The City Manager may sustain, reverse, or modify the decision appealed.
18 The City Manager's decision is final.

19 **ARTICLE 2. SOUND ASSOCIATED WITH CONCRETE POURS AND VEHICLES.**

20 **§ 4-20-20 CONCRETE POURS.**

- 21 (A) For property located within 600 feet of a residence, church, hospital, hotel,
22 or motel, the accountable official may issue a permit under Subsection (B)
23 authorizing an applicant to deliver, place, or pour concrete during the non-
24 peak hour period of 7:00 p.m. to 6:00 a.m. if:
- 25 (1) the accountable official determines that the delivery, finishing,
26 placement, or pouring of concrete during non-peak hours is in the
27 interest of the public health, safety, and welfare, or is justified by
28 urgent necessity; and
- 29 (2) the property is located:
- 30 (a) within the Downtown Density Bonus area identified in Section
31 25-2-586(B) (*Downtown Density Bonus Program*); and
- 32 (b) within one of the following zoning districts:

- 1 (i) the Central Business District (CBD) base zoning district;
- 2 or
- 3 (ii) the Public (P) zoning district.

4 (B) The accountable official may issue one of the following permit types for a
5 project if the application meets the general standards in Subsection (A) and
6 complies with the additional restrictions under this subsection, which must
7 be listed as conditions on the permit.

8 (1) Type 1 Non-Peak Hour Permit:

- 9 (a) Maximum sound level: 83 decibels, unless further restricted by
- 10 a sound management plan.
- 11 (b) Permitted days during the week: Everyday.
- 12 (c) Permitted hours: 7:00 p.m. and 12:00 a.m.

13 (2) Type 2 Non-Peak Hour Permit:

- 14 (a) Maximum sound level: 78 decibels, unless further restricted by
- 15 a sound management plan.
- 16 (b) Permitted days of the week: Everyday.
- 17 (c) Permitted hours: Midnight to 6:00 a.m.

18 (3) Type 3 Non-Peak Hour Permit:

- 19 (a) Maximum sound level: Unlimited.
- 20 (b) Permitted days during the week: Everyday.
- 21 (c) Permitted hours: 7:00 p.m. to 6:00 a.m.
- 22 (d) The accountable official may only issue a Type 3 Non-Peak
- 23 Hour permit if:
 - 24 (i) a special circumstance exists that requires a continuous
 - 25 pour, such as a mat slab or similar foundation pour that
 - 26 would be inconsistent with a Type 1 or 2 permit; and
 - 27 (ii) the permit application includes a letter from a
 - 28 professional engineer of record for the project confirming
 - 29 that late night pour must be continuous and cannot be
 - 30 reasonably divided into multiple shorter pours.

- 1 (4) Decibel restrictions for Type 1 and Type 2 permits shall be measured
2 at a distance of 75 feet from the sound source, unless further restricted
3 by a sound management plan.
- 4 (5) If a neighbor adjacent to a site with an active permit under this section
5 alleges a violation of the applicable decibel limit, the accountable
6 official shall deploy sound monitoring equipment to the site and
7 document whether or not the applicable decibel restriction has been
8 violated. The sound data provided by the sound monitoring equipment
9 shall be available to the public in real time, if possible.
- 10 (C) A permit issued under this section must state the duration during which the
11 authorized activity may occur, which may not exceed 72 hours. An applicant
12 may not hold more than one permit under this section for a single project.
- 13 (D) A person must submit an application to deliver, finish, place, or pour
14 concrete during non-peak hour periods under this section on a form
15 approved by the accountable official that includes:
- 16 (1) the name, address, telephone number of the applicant;
- 17 (2) the address or a description of the location of the property where the
18 work will be performed; and
- 19 (3) the type of permit required, which must be one of the categories listed
20 in Subsection (B) of this section.
- 21 (E) To mitigate possible impacts and minimize disruptions to adjacent
22 residential, commercial, and civic uses, the applicant is responsible for
23 ensuring that all delivery, placement, or pouring of concrete permitted under
24 this section complies with the requirements of this subsection.
- 25 (1) Notification of the exact date, time, and duration of non-peak hour
26 activity authorized under Subsection (A), as well as 24-hour contact
27 information for the individual with primary responsibility for the
28 project, shall be:
- 29 (a) provided to city staff and to abutting property owners located
30 next door or across the street;
- 31 (b) provided to representatives of property owners and residents
32 within 600 feet; and
- 33 (c) clearly stated on a sign posted on the property at the
34 construction entrance and visible from the street.

1 (2) As a condition to approval of a non-peak hour permit under
2 Subsection (A) of this section, an applicant must comply with a sound
3 and light management plan approved by the accountable official
4 consistent with the requirements of this subsection.

5 (a) A sound and light management plan must identify:

6 (i) where concrete trucks will queue to ensure minimal
7 disruption to adjacent residences, businesses, and civic
8 uses;

9 (ii) where the concrete pump will be located during all
10 phases of construction and provides for an alternate
11 location in the event the accountable official determines
12 that relocating the pump is necessary to minimize
13 disruption to adjacent residential and civic uses;

14 (iii) the location, materials and manner of placement of
15 proposed mitigation materials, such as sound baffling, on
16 the property to contain noise from concrete pumps and
17 concrete trucks during high revolutions per minute
18 (RPM) cycles before construction begins; and

19 (iv) the name and cell phone number of the on-site
20 supervisor, who must be on the property during the non-
21 peak hour concrete pour.

22 (F) Concrete finishing is permitted from 7:00 p.m. to 6:00 a.m., provided that it
23 does not include delivery, placement, or pouring.

24 (G) This subsection provides for the denial of non-peak concrete pour permits if
25 the accountable official finds that a project has accrued violations of this
26 section or a sound and light management plan required under this section:

27 (1) if three or more violations occur within a 30-day period, the
28 accountable official shall not issue a new non-peak hour permit under
29 this section for a period of 30 days from the date of the last violation
30 and shall issue a 30-day suspension letter to the applicant;

31 (2) if six or more 30-day suspensions are issued within any 12-month
32 period, the accountable official may not issue any additional non-peak
33 hour permits for the project; and

1 (3) for purposes of Subsection (G)(2), the 12-month period is reset if less
2 than six 30-day suspensions are within 12 months from the date of the
3 first non-peak hour permit issued for the project.

4 (H) If an application for a building permit was submitted prior to December 1,
5 2014, the accountable official shall:

6 (1) permit delivery, placement, or pouring of concrete in connection with
7 a construction of that building during the non-peak hour period of
8 7:00 p.m. to 6:00 a.m.; and

9 (2) require a sound and light management plan, as provided in Subsection
10 (D)(2) of this section.

11 **§ 4-20-21 SOUND EQUIPMENT ON VEHICLES.**

12 (A) A person may not operate or allow another to operate sound equipment
13 attached to or mounted to a vehicle without a permit.

14 (B) A person must submit an application to the accountable official on a form
15 approved by the accountable official.

16 (C) A permit issued under this section is valid for a 24-hour period and may
17 allow sound equipment to be operated between:

18 (1) 10:00 a.m. and 8:00 p.m. on Mondays through Saturdays; or

19 (2) 12:00 noon and 6:00 p.m. on Sunday.

20 ***ARTICLE 3. AMPLIFIED SOUND***

21 **§ 4-20-30 AMPLIFIED SOUND PERMITS.**

22 In this chapter, an amplified sound permit includes a permit to operate an outdoor
23 venue and a permit to operate sound equipment at a temporary event.

24 **§ 4-20-31 RESTRICTIONS.**

25 (A) The City will not issue an amplified sound permit for a premises located
26 within 100 feet of a residential premises.

27 (B) Unless Subsection (C) or Subsection (D) applies, for a premises located
28 more than 100 feet but less than 600 feet from a residential premises, the
29 accountable official may issue an amplified sound permit to operate sound
30 equipment between 10:00 a.m. and:

31 (1) 8:00 p.m. Sunday through Thursday; and

1 (2) 10:00 p.m. on Friday and Saturday.

2 (C) If, on the effective date of this chapter, the owner or operator of a premises
3 described in Subsection (B) is subject to an agreement with an affected
4 neighborhood organization to extend the hours sound equipment may be
5 operated at the property, the owner, operator, or permittee may continue to
6 operate consistent with the agreement until September 1, 2018.

7 (D) For a premises described in Subsection (B), the accountable official may
8 issue an amplified sound permit to operate sound equipment between 10:00
9 a.m. and 10:00 p.m. Sunday through Thursday and 10:00 a.m. and 12:00
10 midnight on Friday, Saturday, and the day preceding a federally-recognized
11 holiday. When considering whether to approve the operating hours described
12 in this subsection, the accountable official must consider the following:

13 (1) prior agreements with owners and tenants of nearby premises;

14 (2) prior agreements with neighborhood organizations;

15 (3) compliance history; and

16 (4) factors associated with compatibility that are established by rule.

17 (E) Unless Subsection (F) or Subsection (G) applies, for a premises located
18 more than 600 feet from a residential premises, the accountable official may
19 issue an amplified sound permit to operate sound equipment between 10:00
20 a.m. and:

21 (1) 10:30 p.m. Sunday through Wednesday;

22 (2) 11:00 p.m. on Thursday; and

23 (3) 12:00 midnight on Friday, Saturday, and the day preceding a
24 federally-recognized holiday.

25 (F) The accountable official may issue an amplified sound permit to operate
26 sound equipment between 10:00 a.m. and 2:00 a.m. every day if the
27 premises has an occupancy capacity of 600 or fewer people, is located more
28 than 600 feet of a residential premises, and is located within the Warehouse
29 District or Sixth Street District.

30 (G) For a premises located more than 600 feet from a residential premises, the
31 accountable official may issue an amplified sound permit to operate sound
32 equipment between 10:00 a.m. and 2:00 a.m. during Spring Festival Season.

- 1 (H) For purposes of this section, distance is measured along the property lines of
2 the street fronts and from front door to front door, and in direct line across
3 intersections. If a premises was the subject of an outdoor music venue permit
4 issued after August 31, 2016, and the permit is not suspended or revoked,
5 the distance measured at the time the permit was issued controls.
- 6 (I) For a premises located within a commercial recreation district, as defined in
7 Section 25-2-96 (*Commercial Recreation (CR) District Regulations*), the
8 accountable official may issue an amplified sound permit to operate sound
9 equipment that causes sound up to 70 decibels.
- 10 (J) For a premises associated with a restaurant (general), as defined in Section
11 25-2-808 (*Restaurants and Cocktail Lounges*), the accountable official may
12 issue an amplified sound permit to operate sound equipment that causes
13 sound up to 70 decibels.
- 14 (K) The City will not issue an amplified sound permit to operate sound
15 equipment that causes sound to exceed 85 decibels.
- 16 (L) The City will only allow a premises to be the subject of a permit to operate
17 sound equipment at a temporary event for up to 19 days per calendar year.
- 18 (M) A premises may be the subject of only one permit to operate sound
19 equipment at a temporary event during a 30-day period, which begins the
20 day after the permit associated with the premises expires.
- 21 (N) A permit to operate sound equipment at a temporary event may not exceed
22 four consecutive days or four non-consecutive days during a 30-day period.

23 **§ 4-20-31 APPLICATION REQUIREMENTS.**

- 24 (A) A person must submit an application to the accountable official on a form
25 approved by the accountable official.
- 26 (B) An applicant must provide the accountable official, at a minimum, the
27 following:
- 28 (1) the applicant's name, address, and telephone number;
- 29 (2) if the owner of the premises is not the same as the applicant, the
30 owner's name, address, and telephone number;
- 31 (3) the address of the premises where sound equipment will be used;
- 32 (4) the proposed hours to operate sound equipment;

- 1 (5) the size and occupancy limit of the premises;
- 2 (6) sound-mitigating design features; and
- 3 (7) a signed statement that applicant reviewed a copy of this chapter and
- 4 related administrative rules and the applicant will comply with all
- 5 applicable requirements.

6 (C) An applicant for a permit to operate sound equipment during a temporary
7 event must provide the information described in Subsection (B) and also the
8 following:

- 9 (1) the proposed dates to operate sound equipment;
- 10 (2) the proposed location of stages; and
- 11 (3) the size, location, and orientation of speakers.

12 **§ 4-20-32 APPLICATION NOTICE REQUIREMENTS.**

13 (A) This section applies to an application for an application for an outdoor venue
14 and to an application to operate sound equipment at a temporary event with a
15 proposed duration that exceeds 24 hours.

16 (B) An interested party is entitled to notice by mail of an application that is
17 subject to this section.

18 (C) The accountable official may mail notice, or may require the applicant to
19 mail notice, of the application to interested parties. If notice is mailed by the
20 applicant, the accountable official may audit whether the applicant sent
21 notice as required by this section.

22 (D) If the applicant failed to comply with this section, a permit issued under this
23 chapter is considered issued in error and is subject to suspension or
24 revocation.

25 (E) A notice described in Subsection (B) must include the following
26 information:

- 27 (1) the general nature of the application;
- 28 (2) name of applicant;
- 29 (3) address of premises included in the application;
- 30 (4) contact information for the accountable official;
- 31 (5) earliest date a decision on the application will be made;

- 1 (6) process to submit comments about the application;
- 2 (7) if the application is granted, a process to appeal the decision; and
- 3 (8) if the application is to operate sound equipment at a temporary event,
- 4 the duration of the temporary event, size of the premises, number of
- 5 anticipated attendees, and whether the sale or consumption of alcohol
- 6 will be allowed.

7 **§ 4-20-33 APPLICATION APPROVAL.**

8 (A) The accountable official may take action on an application described in
9 Section 4-20-32(A) no earlier than the 15th day from the date notice was
10 mailed.

11 (B) The accountable official shall approve an application to operate sound
12 equipment at a temporary event if:

- 13 (1) the applicant submits an application that complies with Section 4-20-
14 30 (*Application Requirements*);
- 15 (2) the applicant pays all required fees;
- 16 (3) the applicant obtains any required temporary use, temporary change of
17 use, and temporary closure of a right-of-way approvals;
- 18 (4) the accountable official approves a sound impact plan related to the
19 application;
- 20 (5) the applicant complies with applicable notice requirements; and
- 21 (6) the applicant obtains all other required approvals.

22 (C) The accountable official shall approve an application for an outdoor venue
23 permit if:

- 24 (1) the applicant submits an application that complies with Section 4-20-
25 30 (*Application Requirements*);
- 26 (2) the applicant pays all required fees;
- 27 (3) the accountable official approves a sound impact plan related to the
28 application; and
- 29 (4) the applicant complies with applicable notice requirements.

30 (D) A decision under this section must:

- 31 (1) be in writing;

- (2) describe sound impact plan requirements;
- (3) include information related to appeals; and
- (4) be mailed to the applicant.

(E) For purposes of this section, if the applicant requests, a decision may be sent by electronic mail.

§ 4-20-34 OPERATIONAL REQUIREMENTS.

(A) A person may not operate, or allow another to operate, sound equipment to cause sound that exceeds the decibel limit established by the accountable official in the applicable sound impact plan.

(B) A permittee must operate, or require another to operate, sound equipment to comply with this chapter and any requirements included in the applicable sound impact plan.

(C) When sound equipment is operated, the permittee must require a responsible person to be present at the premises.

(D) A permittee must comply with the Good Neighbor Policy and all applicable laws, including City Code and state law.

(E) A permittee must post signs designed, placed, and sized consistent with requirements set by the accountable official. The signs required by this subsection must include the following information:

- (1) name and contact information for the permittee and responsible person;
- (2) authorized decibel limits and operating hours for sound equipment; and
- (3) date the permit was issued and date it expires.

§ 4-20-35 SOUND IMPACT PLAN.

(A) A sound impact plan is required for an amplified sound permit issued under this article.

(B) The elements of a sound impact plan include:

- (1) sound-mitigating design features;
- (2) prescribed decibel limits;
- (3) operating hours for sound equipment;

- (4) use of decibel meters or sentinels on site;
- (5) contact information for the responsible party;
- (6) permit display location; and
- (7) any other elements required by the accountable official.

(C) As part of the sound impact plan, the accountable official may prescribe decibel limits and operating hours that are more restrictive than otherwise provided in this chapter.

(D) During the two-year permit period, the accountable official may modify a sound impact plan after the accountable official provides the permittee a notice of intent to modify the sound impact plan.

§ 4-20-36 GOOD NEIGHBOR POLICY.

(A) The purpose of this policy is to maintain the safety, quiet, and cleanliness of the area surrounding an outdoor venue or a premises with a permit to operate sound equipment during a special event.

(B) This policy must be adopted by rule in accordance with Chapter 1-2-*(Adoption of Rules)* and Section 4-20-7 *(Administrative Rules)*.

§ 4-20-37 EFFECT OF COMPLIANCE WITH AN OUTDOOR VENUE.

A permittee who complies with this chapter and Chapter 9-2 *(Noise)* is presumed not to constitute a nuisance as it concerns noise, sound, and sound equipment.

ARTICLE 4. ENFORCEMENT

§ 4-20-40 OFFENSES AND PENALTY.

(A) A person commits an offense if the person violates any requirement in this chapter.

(B) A person commits an offense if the person conducts a concrete pour during non-peak hours without a permit required by this chapter.

(C) A person commits an offense if the person operate, or allows another to operate, sound equipment attached to or mounted on a vehicle without a permit required by this chapter.

(D) A person commits an offense if the person operates, or allows another to operate, an outdoor venue without a permit required by this chapter.

- 1 (E) A person commits an offense if the person operates, or allows another to
2 operate, sound equipment at a temporary event without a permit required by
3 this chapter.
- 4 (F) A culpable mental state is not required for the commission of an offense
5 under this chapter and need not be proved.
- 6 (G) Each occurrence of a violation of this chapter is a separate offense.
- 7 (H) An offense under this chapter is punishable as set forth in Section 1-1-99
8 (*Offenses; General Penalty*).

9 **§ 4-20-41 NOTICE OF INTENT TO SUSPEND OR REVOKE.**

- 10 (A) The accountable official may give notice to the permittee of the official's
11 intent to suspend or revoke a permit issued under this chapter.
- 12 (B) The notice may include:
- 13 (1) a proposed modification to the sound impact plan; or
- 14 (2) the time, date, and place for a mandatory meeting between the
15 permittee and City personnel; and
- 16 (3) the proposed suspension or revocation date.

17 **§ 4-20-42 SUSPENSION OF A PERMIT.**

- 18 (A) The accountable official may suspend a permit if the official determines that
19 the permit was issued in error.
- 20 (B) The accountable official may suspend a permit for a concrete pour as
21 provided in Section 4-20-20(G) (*Concrete Pours*).
- 22 (C) The accountable official may suspend a permit if the official determines that
23 at least four documented violations of this chapter related to the premises
24 have occurred within a 45-day period.
- 25 (D) Except as otherwise provided, a suspension is effective for up to two weeks.
- 26 (E) During a suspension, sound equipment may not be operated at the premises.
- 27 (F) A permittee may appeal a suspension as provided in Section 4-20-7
28 (*Administrative Appeals*), except that an appeal must be submitted in writing
29 within five days from the date the decision to suspend is issued.
- 30 (G) An appeal does not stay a suspension.

31 **§ 4-20-43 REVOCATION OF A PERMIT.**

- 1 (A) During a suspension, the accountable official may revoke a permit without
2 prior notice if:
- 3 (1) the accountable official determines that the permittee violated Article
4 3 (*Amplified Sound*);
- 5 (2) the accountable official determines that the permittee violated the
6 suspension; or
- 7 (3) the permittee failed to attend a meeting described in Section 4-20-41
8 (*Notice of Intent to Suspend or Revoke*).
- 9 (B) For purposes of this section, determines means a documented violation of
10 Article 3 (*Amplified Sound*), or of the suspension.
- 11 (C) After giving the permittee the notice described in Section 4-20-41 (*Notice of*
12 *Intent to Suspend or Revoke*), the accountable official may revoke the permit
13 because:
- 14 (1) the accountable official suspended the permit more than one time
15 during a six-month period; or
- 16 (2) the reason the permit was issued in error is not, or cannot be,
17 corrected.
- 18 (D) If a permit is revoked, sound equipment may not be operated at the premises.
- 19 (E) A permittee may appeal a revocation as provided in Section 4-20-7
20 (*Administrative Appeals*), except that an appeal must be submitted in writing
21 within five days from the date the permit is revoked.
- 22 (F) An appeal does not stay a revocation.

23 **ARTICLE 5. DISCLOSURE REQUIREMENTS.**

24 **§ 4-20-50 APPLICABILITY.**

- 25 (A) For purposes of this article, a premises is a permitted outdoor venue if it is
26 the subject of an active outdoor venue permit or if the premises was the
27 subject of an outdoor venue permit within the preceding 12 months.
- 28 (B) A residential premises located within 600 feet of a permitted outdoor venue.
29 For purposes of this article, residential premises includes a hotel, motel, or
30 other similar transient lodging.
- 31 (C) A commercial premises that may be used as an outdoor venue and is located
32 less than 600 feet from a residential premises.

1 **§ 4-20-51 DISCLOSURE REQUIRED.**

2 (A) A person who sells a residential premises subject to this article must provide
3 a written notice to a person who intends to purchase the premises that a
4 permitted outdoor venue is located within 600 feet.

5 (B) A person who rents a residential premises subject to this article must provide
6 written notice to an individual renting the premises for more than 30
7 consecutive days that a permitted outdoor venue is located within 600 feet.

8 (C) A person who sells or rents a commercial premises subject to this article
9 must provide written notice to a person who intends to purchase or rent the
10 premises that a residential premises is located within 600 feet of the
11 premises.

12 (D) A notice required by this section must be provided to a person before the
13 effective date of an executory contract that binds the purchaser to purchase
14 the premises.

15 (E) A notice required by this section must be provided to a person before the
16 effective date of an agreement that binds the person to rent the premises.

17 **PART 3.** The City Council directs the City Manager to provide the Council with a report
18 related to the implementation of this ordinance on or before September 1, 2019. The City
19 Manager should include any recommendations related to a permit process for amplified
20 sound within enclosed permanent structures.

21 **PART 4.** This ordinance takes effect on September 1, 2017.

22 **PASSED AND APPROVED**

23
24 §
25 §
26 _____, 2017 § _____

27 Steve Adler
28 Mayor

29 **APPROVED:** _____
30 Anne L. Morgan
31 City Attorney

ATTEST: _____
Jannette S. Goodall
City Clerk