

**STAFF REPORT
OUTDOOR MUSIC VENUE PERMIT**

CASE NUMBER: SO-2010-0037M

NAME AND LOCATION OF BUSINESS: The Allan House, 1104 San Antonio

ZONING: CS

APPLICANT/AGENT: Daniel Ross

APPELLENT: Albert Stowell

REQUEST: Outdoor Music Venue Permit

TIMELINE/SUMMARY OF ACTIONS:

01/28/10 - Application received
02/03/10 - Noticed mailed
02/17/10 - Date to register as interested party
03/16/10 - Application approved
03/29/10 - Appeal received from Albert Stowell
03/30/10 - Deadline to appeal decision

STAFF RECOMMENDATION: Approval for following reasons:

Complies with Chapter 9-2
Speakers face east toward commercial buildings
Decibel level at 70db in lieu of 85db

HOURS OF OPERATION:

10:00 a.m. to 10:30 p.m. Sunday
10:00 a.m. to 10:30 p.m. Monday
10:00 a.m. to 10:30 p.m. Tuesday
10:00 a.m. to 10:30 p.m. Wednesday
10:00 a.m. to 11:00 p.m. Thursday
10:00 a.m. to Midnight Friday
10:00 a.m. to Midnight Saturday

LEGAL INTERESTED PARTIES:

Albert Stowell
OWANA

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
SITE	CS	Office/Indoor Entertainment
NORTH	GO-H	Office/Retail
SOUTH	CS	Court Annex
EAST	CS	Parking Lot
WEST	CS	Office

COMPLAINTS SINCE PERMIT ISSUED: (Provided by Leander Davila, APD)

Date 03/27/10 **Time** 9:34pm **Complaint Nature** Disorderly Conduct (DOC) / City Ordinance Violation

Summary of Complaint Caller stated that there was loud music from this location and that it is an ongoing problem. Officer responded. A wedding was taking place and the officer observed no loud music.

Date 05/01/10 **Time** 10:42pm **Complaint Nature** Disorderly Conduct (DOC) / City Ordinance Violation

Summary of Complaint Caller stated that a majority of the loud music was coming from the back of this location. No other information provided in this case.

Date 05/15/10 **Time** 10:53pm **Complaint Nature** Disorderly Conduct (DOC) / City Ordinance Violation

Summary of Complaint Caller stated that loud bass was coming from this location or nearby. Officer responded and determined that a wedding party just ended.

Date 06/04/10 **Time** 9:10pm **Complaint Nature** Disorderly Conduct (DOC) / City Ordinance Violation

Summary of Complaint Caller stated that a loud party was coming from this location. The responding officer spoke to the manager. Officer determined that the location does have a valid after hours outdoor music venue permit with a maximum decibel level of 70 and must be shut down prior to midnight on Fridays.

Date 06/04/10 **Time** 10:29pm **Complaint Nature** Disorderly Conduct (DOC) / City Ordinance Violation

Summary of Complaint Caller stated a loud party was taking place at this location. The responding officer noted that an after hours permit was in effect.



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

**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) 974-2686.

CASE NO. OS-2010-0037M

DATE APPEAL FILED 03-29-2010

VENUE NAME Allan House

YOUR NAME Albert Stowell

VENUE ADDRESS 1104 San Antonio Street; Austin
78701

YOUR ADDRESS 606 W. 11th Street; Austin
78701

CITY CONTACT Clara Hilling

YOUR PHONE NO. 512-422-2857

SECTION OF CODE APPEALED: 9-2-25

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

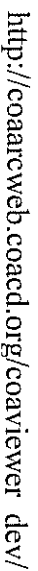
Date of Decision: 03-15-2010

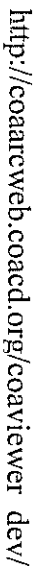
Date of Decision: _____

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:

When this OMV permit was issued, there was not in effect a temporary or conditional outdoor entertainment use permit for this property. I contend that the temporary use permit issued on 16 March 2010 allowing outdoor entertainments at this site was issued in error. The issuance of that permit is currently being appealed. This OMV permit should be held in abeyance until the validity of its underlying temporary use permit is determined.

X





CLARK, THOMAS & WINTERS

A PROFESSIONAL CORPORATION

TELEPHONE (512) 472-8800
FAX (512) 474-1120

POST OFFICE BOX 1148
AUSTIN, TEXAS 78707

300 WEST 6TH STREET, 15TH FLOOR
AUSTIN, TEXAS 78701

JOHN M. JOSEPH
(512) 495-8805
JMJO@CTW.COM

May 6, 2010

Via Email & US Mail

Mr. Greg Guernsey
Director, Planning & Development Review Dept.
City of Austin
P.O. Box 1088
Austin, Texas 78767

RE: Use Determination Request for The Allan House, 1104 San Antonio Street,
Austin, Texas 78701

Dear Director Guernsey,

This firm represents Allan-Thrasher, L.L.C., the owner of the above-referenced property ("Allan-Thrasher"). Please consider this letter a formal request for a use determination, pursuant to City of Austin ("City") Land Development Code ("LDC") § 25-2-2(A), for the above-referenced property. To assist you in making your determination, I am providing to you in this letter factual information regarding both factors to be considered pursuant to LDC § 25-2-2(B): (1) characteristics of the existing use, and (2) similarities between this existing use and other classified uses. Additionally, this letter will provide a chronology of events and interactions between representatives of Allan-Thrasher and City staff and/or residents of the surrounding neighborhood and a legal analysis of ordinance interpretation to assist you fully understanding this matter and making an appropriate use determination.

I. History & Characteristics of Existing Use

In 1883, Scottish immigrant John T. Allan built the Victorian mansion now known as The Allan House. Mr. Allan, remembered as the "Father of Industrial Education in Texas," was an attorney, public servant, and philanthropist. Initially Mr. Allan's residence, The Allan House was later used as a girls' school and boarding home. After Mr. Allan's passing in 1888, he bequeathed The Allan House to the City with the request that the City establish an industrial school to teach the practical use of tools and scientific principles. In September 1896, as a result of his benefaction, a manual-training department was established at Austin High School. It was the first of its kind in the South. John T. Allan High School (later John T. Allan Junior High) was named for him and opened in 1900. In 1936, a memorial to Mr. Allan was erected at John T. Allan High School (now the Austin Community College Rio Grande campus) in remembrance of his vision and generosity.

In 1905, Thomas E. Thrasher purchased The Allan House from the school board, and it became known as The Allan-Thrasher House. The home was later inherited by his daughter, Lois Deats Thrasher. Miss Thrasher resided in The Allan-Thrasher House until her death in 1992. After Miss Thrasher passed away, the house stood empty for several years.

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On December 31, 1999, Daniel Ross, an attorney and longtime Austin businessman, purchased The Allan House through his company Allan-Thrasher, LLC. Determined to restore the building to its previous splendor, he oversaw an extensive renovation that maintained the home's historic beauty, while updating it with modern conveniences. Mr. Ross is ever mindful that The Allan House is now one of a very few houses in Austin that are 120 or more years old.

In mid 2000, following completion of the remodel and extensive landscaping that transformed what was once an eye sore in the downtown area, Mr. Ross initiated operation of his law office at The Allan House. Contemporaneously, Mr. Ross sought to share the beauty and history of The Allan House with the public by allowing weddings, receptions, and fund raisers to be held at The Allan House on weekends and evenings. Brides, families, charities, and political candidates could hold their events in the home and on the restored grounds under the towering oak trees.

Over the past decade, The Allan House has been used as a law office during regular business hours (8:30 a.m. to 5:30 p.m. Monday-Friday) and a location for events during evenings and weekends (6:00 p.m. to 11:00 p.m. Monday-Friday and 11:00 a.m. to 11:00 p.m. Saturday-Sunday). The general scope and size of events hosted at The Allan House are as follows: weddings (90 attendees), wedding receptions (100 attendees) and fundraisers (50 attendees). Other events held at The Allan House include: judge's investiture ceremonies, judge's meetings and conferences, weekly group lunch meetings and memorial services. Some of the charities to conduct fundraisers at The Allan House are Austin Smiles, the Make-a-Wish Foundation, the Blood and Tissue Center, Project Graduation and the Heart House. Though The Allan House does not furnish food or beverages, it does provide an on-site manager and on-site security at every event. All neighboring properties to The Allan House property, including those across the street, are commercial properties.

II. Chronology of Events & Interactions

The following events and interactions regarding The Allan House may be helpful to you in understanding why this use determination is requested of you at this time:

On September 9, 2003, Allan-Thrasher obtained a zoning verification letter from Tony Ray Castro with the City stating that the current zoning of The Allan House was "DMU: Downtown Mixed Use."

On May 18, 2004, Allan-Thrasher received a Notice of Violation. The notice stated that the current Certificate of Occupancy was "for office and administrative service use" and that the current use of "events center" was in violation of the Certificate of Occupancy.

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Following the notice of alleged violation, Allan-Thrasher, through a consultant named Charles Dunn, contacted the City to determine what needed to be done to obtain compliance and avoid any further notices. On or before August, 2004, Mr. Dunn discussed a change of use with City staff and it was determined that Allan-Thrasher should file a Site Development Determination/Exemption proposing that the current use of the property be changed from "Business/Administrative Office" to "Professional Office/Event Center." When this application was submitted, City staff marked through the "Event Center" request and wrote in "Indoor Entertainment." City staff also noted that there was "No parking required for uses in DMU < 6,000 sq. ft."

On June 1, 2005, Allan-Thrasher received another Notice of Violation stating that "mobile vending trailer, outside entertainment and outside seating not allowed according to current site plan." Again, in an effort to ensure compliance and avoid additional notices, Allan-Thrasher retained another consultant, Jim Bennett, to contact the City. Following meetings with City staff, Mr. Bennett filed a Site Plan Exemption Request on August 15, 2005, seeking to add the mobile vending trailer to the site plan. Again, the zoning for The Allan House property was listed as DMU. The request was subsequently withdrawn and use of the mobile vending trailer discontinued.

In April, 2006, Allan-Thrasher received another Notice of Violation and charges were filed in the City of Austin Municipal Court. The affidavit of Kathleen Buchanan accompanying the charge stated that Daniel B. Ross was allowing the property to be used for "outdoor entertainment purposes in violation of the existing site plan and the City of Austin Land Development Code." Ms. Buchanan's affidavit went on to state that "[s]uch use in violation of the existing site approved and released site plan included using and/or allowing the property to be used for or as an outdoor entertainment venue, including using or allowing the or provision of the following on the property: outdoor seating, tables, chairs, outdoor bartender service, live musical entertainment, outdoor catering and food and beverage service . . . [and that] . . . no approval or permission has been granted or authorized for the use, change of use, or development of this property for outdoor entertainment or as an outdoor entertainment venue." This event is the genesis of Allan-Thrasher representatives' understanding that City staff considers the operation of The Allan House to constitute an "Outdoor Entertainment" use pursuant to the LDC.

As a result of this alleged violation, in early June, 2006, Mr. Bennett and Jim Terry (agents of Allan-Thrasher) met with you and Jerry Rusthoven to discuss the Notices of Violation and how Allan-Thrasher's operation of The Allan House could comply with applicable zoning regulations and avoid additional notices. The discussion also involved the proper use classification for The Allan House. Jerry Rusthoven suggested filing a "use determination" request with the City.

On June 19, 2006, the law firm of Ross, Melton, Denosky & Balczak, P.C., on behalf of Allan-Thrasher, submitted to you a letter requesting "the use classification for a venue that

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regularly hosts indoor and outdoor events likes weddings, receptions, or parties" and in which zoning classification are those sorts of indoor/outdoor events allowed. The requested use determination was never provided, nor was a response of any kind offered.

On July 6, 2006, Allan-Thrasher obtained another zoning verification letter from Tony Ray Castro with the City. This time, however, the zoning for The Allan House property was listed as "CS: General Commercial Services." In order to clear up the zoning confusion, Allan-Thrasher filed for a zoning change from CS to DMU in the spring of 2007.

In March, 2007, in an effort to avoid receipt of additional Notices of Violation due to City staff's characterization of the use of the The Allan House for "Outdoor Entertainment," Allan-Thrasher representatives sought and obtained a Temporary Use Permit allowing for the use provided in LDC § 25-2-921(C). A valid Temporary Use Permit allowing for this use has been maintained by Allan-Thrasher since March, 2007, the most recent permit being obtained on March 17, 2010.

In April, 2007, (current City Councilmember) Chris Riley contacted Allan-Thrasher to express his opposition to the zoning change from CS to DMU. On May 4, 2007, Mr. Terry, Mr. Bennett and Mr. Riley met to discuss the proposed zoning change. Mr. Riley suggested withdrawing the zoning change and seeking a parking variance. Mr. Riley stated that he, Ted Siff, the Old Austin Neighborhood Association ("OANA") and the Downtown Austin Neighborhood Association would support a parking variance and he offered to provide letters of support. In reliance on the agreement, Allan-Thrasher withdrew its request for a zoning change.

On March 3, 2008, Allan-Thrasher filed an Application to the Board of Adjustment requesting a parking variance. On April 22, 2008, Mr. Riley provided a letter of support for the parking variance.

On May 9, 2008, Mr. Siff contacted Mr. Terry and informed him that he opposed the parking variance, not because of parking, but because of sound issues. As a result, the hearing on the variance was re-scheduled so that Allan-Thrasher could attempt to resolve the opposition by Mr. Siff.

On June 3, 2008, Mr. Terry, Mr. Bennett, Mr. Siff, Albert Stowell, Blake Tollett, and Mr. Riley met at The Allan House to discuss the sound concerns. Mr. Siff admitted that he had no problem with the parking, but that this was the only leverage he had to deal with sound issues. Mr. Siff provided two samples of other agreements that OANA had reached with other venues in the past.

Following the meeting, Allan-Thrasher proposed an agreement limiting the sound level from The Allan House to 75 decibels, the same level established in the other agreements Mr. Siff

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had provided. Mr. Siff replied with a demand for a maximum of 50 decibels and provision authorizing law enforcement to enforce the agreement.

Having reached no agreement, Mr. Terry and Mr. Bennett attended the Board of Adjustment hearing on or about June 6, 2008. Mr. Siff, Mr. Stowell, and Mr. Tollett appeared and opposed the variance. The Board of Adjustment granted the variance conditioned on a 70 decibel limit.

On March 2, 2009, with the parking variance intact, Allan-Thrasher filed a Conditional Use Site Plan application to allow for an "Outdoor Entertainment" use on the property. This application has since been withdrawn/resubmitted and is pending.

On March 16, 2010, Allan-Thrasher obtained for The Allan House an Outdoor Music Venue Permit ("OMVP"), establishing the same 70 decibel limit.

On April 15, 2010, Mr. Bennett attended a scheduled meeting with you to discuss the expiration of the parking variance for The Allan House. Mr. Terry attended the meeting and discussed the related use issues regarding The Allan House. Mr. Terry gave you an overview of what occurs at The Allan House and how what was once an eye sore has become one of the most beautiful properties in the downtown area. He further explained to you that Outdoor Entertainment was simply not an appropriate classification for what takes place at The Allan House, and that a prior use determination letter had gone unanswered. You then went to the shelf above your desk and retrieved a large three-ring binder, mentioning that it was Mr. Bennett who had the idea of the use determination log when he worked for the City. You looked through the binder at what appeared to be an index of prior use determinations. You found the use of "wedding chapel" and it listed Indoor Entertainment. You then looked at two or three other uses and those also listed Indoor Entertainment as the appropriate use classification. Finally, Mr. Terry asked about getting a use determination and asked if a letter/research from Allan-Thrasher would be helpful. You stated you would look into the issue and agreed that research would be helpful and suggested that how other cities, like Charleston, South Carolina, handled this sort of issue would be instructive. The meeting concluded.

III. Classification of Similar Existing Uses

Over the past two weeks, our office's repeated requests to you and Jerry Rusthoven, by voicemail and email, to review the use determination log that you are to keep pursuant to LDC § 25-2-2(E) have gone unanswered. Our office then contact Joi Harden, who replied that she was told that the use log could not or would not be provided. For this reason, we submitted an Open Records Request to the City on May 4, 2010, to formally request review of the use determination log.

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Due to our inability to gain access to the use determination log at this time, we have conducted our own due diligence into the use designations and/or allowable uses under current zoning of current operations within the city that are similar to The Allan House. The names, locations, zoning, permitted uses and possession of an OMVP for the eight most similar uses are provided in the following chart:

Name	Address	Zoning	Allowed Uses	Outdoor Entertainment Conditional Use Permit	Outdoor Music Permit Issued
Caswell House	1404 West Ave.	LO-H	Commercial - Medical Office (massage therapy)	No	No
Green Pastures	811 W. Live Oak	GR-MU-H-CO-NP	No site plan, site plan exemption or certificate of occupancy on file with the City	No	No
Mercury Hall	601 Cardinal Lane	CS-V and SF-6-CO	Reception/Meeting Hall	No	No
The Mansion at Judge's Hill	1900 Rio Grande	GR-CO-NP and GR-H-CO-NP	Hotel - Restaurant	No	No
Laguna Gloria	3809 W. 35 th St.	SF-3-H	Art Museum	No	No
Austin Women's Club	708 San Antonio	MF-4	No site plan, site plan exemption or certificate of occupancy on file with the City	No	No
The Old School	1604 E. 11 th St.	GR-H-CO-MU-NP	No site plan, site plan exemption or certificate of occupancy on file with the City	No	No
Phillips Center	8140 Exchange Dr.	L1	Office	No	No

Note that not a single one of these eight similar event locations has been designated an Outdoor Entertainment use, is zoned to allow an Outdoor Entertainment use or even possesses an OMVP. Moreover, each of these similar event locations also provide outdoor seating, tables, chairs, outdoor bartender service, live musical entertainment, outdoor catering and food and beverage service. Further, size and scope of events hosted at many of these similar facilities, both indoor and outdoor, are much greater than those hosted at The Allan House.¹

LDC § 25-2-4(B)(45) defines the "Outdoor Entertainment use" as "a predominately spectator use conducted in open, partially enclosed, or screened facilities. This use includes

¹ The fact that these other venues do not have and appear to not be required to have an Outdoor Entertainment use designation and yet Allan-Thrasher seems to be the only venue being charged with criminal violations implicates due process and equal protection concerns under the United States Constitution.

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sports arenas, racing facilities, and amusement parks.” In an effort to locate venues around the city that appear befitting of the Outdoor Entertainment use designation, understanding that there are not any racing facilities or amusement parks within the city, we looked to the following five predominately outdoor sports complexes and area music venues and bars that commonly host indoor/outdoor concerts:

Name	Address	Zoning	Allowed Uses	Outdoor Entertainment Conditional Use Permit	Outdoor Music Permit Issued
Stubb's	807 Red River	CBD-CURE-CO	Restaurant – Cocktail Lounge	No	Yes (Issued on 02/18/10)
The Belmont	305 W. 6 th St.	CBD	No site plan, site plan exemption or certificate of occupancy on file with the City	No	Applied for permit on 01/28/10 (Still in review)
Star Bar	600 W. 6 th St.	CBD	Cocktail lounge	No	Yes (Issued on 03/18/10)
Disch-Falk Field	1300 E. MLK Blvd.	SF-3	No site plan on file	No	No
Darrell K Royal Stadium	405 E. 23 rd St.	Un-zoned	No site plan on file	No	No

Based on our findings, even these largely-to-completely outdoor sports complexes and music venues have not been determined by the City to constitute Outdoor Entertainment uses.

IV. Analysis of Ordinance Interpretation

To assist you in applying the Outdoor Entertainment definition provided in LDC § 25-2-4(B)(45) to The Allan House in conformance with the considerations provided in LDC § 25-2-2(B), I submit to you the following legal requirements.

A. *The ordinance is clear and unambiguous.*

LDC § 25-2-4(B)(45) provides, in pertinent part, that an “Outdoor Entertainment use is a predominantly spectator use conducted in open, partially enclosed, or screened facilities. This use includes sports arenas, racing facilities, and amusement parks.”

It is clear from the unambiguous language of this ordinance that The Allan House is not the type of operation that should be designated as an Outdoor Entertainment use. Texas courts have universally adopted the “clear and unambiguous meaning” test, under which courts may

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"interpret [an] ordinance only if the language's meaning is not clear and plain." If the language is clear and plain, the court is bound by the statutory language's "plain meaning." *Texans to Save the Capitol v. Board of Adjustment*, 647 S.W.2d 773, 775 (Tex.App.-Austin 1983, writ ref'd n.r.e.); see also *Stanford v. Butler*, 181 S.W.2d 269, 273 (Tex. 1944); see also *Seawall East Townhomes Ass'n, Inc. v. City of Galveston*, 879 S.W.2d 363, 364 (Tex.App.-Houston [14th Dist.] 1994, no writ.) (noting that when the words of an ordinance are clear, the ordinance must be given its literal interpretation).

The Allan House is predominantly a professional office housing The Ross Law Group. The normal business hours for The Ross Law Group are from 8:30 a.m. to 5:30 p.m. Monday through Friday, although the attorneys routinely work 55 to 60 hours per week and even on some weekends. During the law firm operations, attorneys and staff offices occupy the second floor and client meetings, consultations, depositions, and mediations occur on the first floor throughout the week. On occasion, during evenings and weekends, The Allan House serves as a location for weddings, receptions and local fundraisers. Thus, there is no doubt that the "predominant" use is for professional offices.

On those occasions when an event is held at The Allan House, its principal use is an indoor venue where guests have access to and occasionally conduct a portion of the event outdoors on the grounds incidental to the principal use. The Allan House does not provide a forum for any spectator event, nor does it primarily conduct any of its events in an "open, partially enclosed, or screened facilit[y]." Furthermore, The Allan House does not service or promote any sporting event, nor does it provide an arena for any type of race or amusement activity. A literal application of the clear language of the ordinance above to the services provided at The Allan House yields the unequivocal conclusion that The Allan House does not fall within the LDC definition of the Outdoor Entertainment use.

Further, the rule of *ejusdem generis* provides that when words of a general nature are used in connection with the designation of particular objects or classes of persons or things, the meaning of the general words will be restricted to the particular designation. *Illico Electric Cooperative v. Midlothian Butane Gas Co., Inc.*, 111 S.W.3d 75, 81 (Tex. 2003); see also *Cleveland v. U.S.*, 329 U.S. 14, 18 (1946) (stating that "under the *ejusdem generis* rule of construction, the general words are confined to the class and may not be used to enlarge it."); *Johnson v. Texas Dept. of Transportation*, 905 S.W.2d 394, 399 (Tex.App.-Austin, 1995) (noting that general words must be of the same kind or class as the specific items listed in a statute). Under the rule of *ejusdem generis*, courts should interpret an ordinance containing an illustrative list to include only items of the same kind as those expressly mentioned. *Id.*

Here, the LDC definition of an Outdoor Entertainment use lists several specific examples of the types of uses constituting outdoor entertainment. Those uses are "sports arenas, racing facilities, and amusement parks." Given these illustrative uses specifically set out in the definition, an application of the rule of *ejusdem generis* does not permit The Allan House to be

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designated as an Outdoor Entertainment use as no sporting, racing, or amusement events are conducted on the property.

B. *Even if the ordinance is ambiguous, the rules of statutory construction lead to the same result.*

Even if it is determined that one or more portions of the LDC definition of Outdoor Entertainment use are ambiguous, a court may consider the ordinance's construction in arriving at the true intent of the law. *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865 (Tex. 1999). In construing a city ordinance, a court will utilize the same rules as it does when construing a statute. *Board of Adjustment v. Wende*, 92 S.W.3d 424, 430 (Tex. 2002). The court first looks to the plain meaning of the words of the ordinance. *Id.* at 430; *see also Upjohn Co. v. Rylander*, 38 S.W.3d 600, 607 (Tex.App.-Austin 2000, pet. denied). If the enacting body does not define the words or phrases used, the court will apply their ordinary meaning and will not enlarge their meaning beyond this standard. As part of this analysis, the court will read every word, phrase, and expression as if it were deliberately chosen and presume that words excluded from the statute were excluded purposely. *Gables Realty Ltd. P'ship v. Travis Cent. Appraisal Dist.*, 81 S.W.3d 869, 873 (Tex.App.-Austin 2002, pet. denied); *see also City of Austin v. Quick*, 930 S.W.2d 678, 687 (Tex.App.-Austin 1996), *aff'd*, 7 S.W.3d 109 (Tex. 1999) (*citing Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981)). In interpreting an ordinance, the court should not construe a statute in a way that leads to a foolish or absurd result. *Meno v. Kitchens*, 873 S.W.2d 789, 792 (Tex.App.-Austin, 1994).

To arrive at the plain meaning of the words utilized by the ordinance, it is necessary to look to a source utilized in the common sphere. Webster's Dictionary defines the word "predominantly" as "mainly" or "for the most part." The same source defines "spectator" as "one who observes an event" or "one who watches." Therefore, taking the plain meaning of these words, a property falling within the Outdoor Entertainment use definition must be used for the most part to observe an event conducted in an open, partially enclosed, or screened facility. Furthermore, since the framers of the ordinance included a list of specific events for which the use would be deemed proper, one must assume that these examples were "deliberately chosen" to provide guidance in the application of the ordinance. As shown above, The Allan House is nothing like a sports arena, racing facility or amusement park. The Allan House hosts events that are participatory in nature and does not provide a venue for events conducted in an open, partially enclosed, or screened facility. To construe the ordinance's language to mean that The Allan House should be designated as an Outdoor Entertainment use would lead to a foolish and absurd result, contrary to the intent of the ordinance.

C. *At most, the events at The Allan House are an accessory use to its Indoor Entertainment use.*

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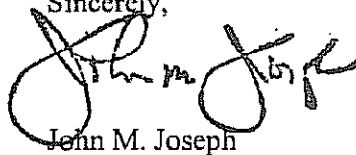
The most logical, proper and appropriate use classification for The Allan House's events is Indoor Entertainment. Any outdoor uses are merely an accessory land use to the principal indoor use. As defined by LDC § 25-1-21(1), "[a]ccessory, when used as an adjective to describe a land use, means incidental to, and customarily associated with, a principal use."

During an event at The Allan House, the principal use is as an indoor venue. The Allan House rents out the house for events, and guests occasionally conduct a portion of the events outdoors on the improved grounds and porches. As with any event being held indoors, guests will customarily congregate to the outdoor porches and grounds of a venue, weather permitting. At no time and under no circumstances has or will The Allan House rent only the outdoor area of the property. The outdoor use is merely an accessory to the Indoor Entertainment use as the outdoor use is "incidental to, and customarily associated with" the indoor event.

Allan-Thrasher does not and has never believed Outdoor Entertainment to be a proper use designation for the activity at the property. Rather, Allan-Thrasher's seeking of the parking variance, Conditional Use Permit, Temporary Use Permits and OMVPs has been merely to avoid further unfounded violations and criminal charges and the substantial costs of defending same. Indoor Entertainment is the proper designation, and the outdoor activities are merely incidental to that use.

In closing, I request that you make this use determination so that Allan-Thrasher, PDRD staff and code enforcement and members of OANA will understand how the operation of The Allan House is to be categorized and regulated. Should you have any questions regarding this matter, please do not hesitate to contact me. I look forward to receipt of your determination in the near term.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Joseph". The signature is stylized with a large initial "J" and a long, sweeping underline.

John M. Joseph

Copy via email: Mr. Dan Ross, Allan-Thrasher, L.L.C.
Mr. Jim Terry, Allan-Thrasher, L.L.C.
Mr. Kevin M. Flahive, Clark, Thomas & Winters, P.C.