

# OUTDOOR LIVE ENTERTAINMENT STUDY EXECUTIVE SUMMARY

## Study Goals

Based on City Council Motion M-20-5, the City Planning Commission staff developed the following Study Goals:

1. Preserve New Orleans' rich musical heritage through appropriate regulations.
2. Clarify regulations that define, provide use standards and determine appropriate and compatible context for outdoor live entertainment.
3. Resolve contradictions for "Live Entertainment – Secondary Use" and "Reception Facility" relating to the closed door and window policy and distance from residential districts.
4. Explore temporary outdoor live entertainment event permitting regulations and procedures.
5. Reduce any unintended secondary effects of outdoor live entertainment relative to the cultural and residential fabric of the city.
6. Consider how COVID-19 may temporarily or permanently change the way events operate.

## Best Practices

City Planning Commission staff conducted case study research on outdoor live entertainment best practices in peer cities. These peer cities included Austin, Texas; Memphis, Tennessee; Nashville, Tennessee; San Francisco, California; Detroit, Michigan; and Seattle, Washington.

### *Common Zoning Themes*

The zoning codes reviewed exhibit wide degrees of granularity and generality in the classification and definition of land uses. Detroit, Memphis and Nashville do not explicitly contemplate outdoor live entertainment as a discrete use in the manner of the New Orleans CZO. This is likely the result of the local milieu, as the degree of granularity in the use classification, in theory, will reflect the needs and unique exigencies of the local music culture and economy. For example, Detroit's colder climate may obviate the need for a discrete definition of outdoor live entertainment in the zoning ordinance due to the prevalence of more indoor activities.

While not universal, it is common practice to prescribe decibel limits, hours of operations, sound abatement plans, orientation and design of sound equipment, and to clearly delineate enforcement mechanisms and appeals processes. Many jurisdictions also tie sound regulations to the specific characteristics of a zoning district and require good neighbor policies or notification requirements when certain criteria are met.

## *Non-Zoning Themes*

San Francisco, Austin and Detroit have entertainment or music commissions that are empowered with a mandate as forums for community input and/or to manage regulatory oversight and review of music-related developments. The staff found that these music-related commissions were more common in larger jurisdictions. While New Orleans is smaller than San Francisco and Austin, the diversity and complexity of the City’s music economy merit emulating the best practices of much larger cities.

## *Key Take-Aways*

- A New Orleans Music Commission similar to the Austin Music Commission would provide an opportunity for music economy stakeholders to contribute to public policies and process.
- A Music Disaster Relief Fund (COVID-19, hurricanes, flooding, etc.) would help financially support the city’s local music economy during times of distress and natural disaster.
- A Live Music Fund would support local musicians more generally.
- A Music Census Report would provide policymakers with data related to the local music economy so that appointed and elected officials can make data-driven decisions.
- Institutionalizing a Music Office Review would formalize transparency, accountability and expediency in the review of music-related permits and potentially make the review process more predictable for applicants seeking permits.

## **Potential Mitigation Strategies**

### *Compliance with the Noise/Sound Ordinance*

The noise ordinance is the traditional legal foundation for the regulation of noise and sound at the municipal level. The purview of the sound ordinance is not limited to the regulation of sound and music, but also includes every auditory disturbance from barking dogs to trucks. The existing noise/sound ordinance was drafted and adopted in the 1960s and was deliberately difficult to enforce. The ordinance has also been in effect for so long without updates that it contains zoning districts which no longer exist.

Stakeholder interviews revealed that enforcement of the noise ordinance is fraught with difficulties, if not unconstitutional. Due to the ordinance’s shortcomings, enforcement of the noise ordinance has been halted until the ordinance is revised and updated, although the Health Department’s proposed revision of the noise ordinance will be delayed due to the COVID-19 pandemic. In particular, the “plainly audible standard” in Chapter 66 is not objective and thus cannot be enforced: what is plainly audible to one person may not be to another based on idiosyncrasies of hearing capacities. The ordinance also specifies the type of device that must be used in taking sound measurements – a technology that is now obsolete.

The City's noise/sound ordinance must also be judicious and circumspect about the sociocultural implications of sound measurement. A-weighting disregards low frequency sound, but C-weighting accounts for low frequency sound and more heavily weights it in final measurement. Certain genres of music have more low frequency components than others, and thus C-weighted scales may discriminate against some forms of music. Because music is a form of protected free speech, it is imperative that the noise ordinance construct a content neutral standard for measuring sound levels to determine allowable levels and that it is written in such a way as to be sensitive to genres, as the overregulation of bass, for example, may discriminate against rap, hip hop or bounce.

The noise/sound ordinance also must clearly delineate enforcement protocols and mechanisms. One proposal regarding enforcement that in stakeholder meetings was that Safety & Permits and the Health Department should be enforcing or citing violations of the sound ordinance, not the New Orleans Police Department. The use of civilian personnel to enforce the sound ordinance might de-escalate otherwise tense or combustible situations, while removing police from the enforcement of the sound ordinance and freeing up police personnel for other duties. Lastly, the noise ordinance is only effective if it is enforced, which thus requires enforcement personnel and the political will to enforce the regulations impartially and fairly.

#### *Hours of Operation*

Hours of business operations can also be utilized to mitigate the adverse impacts of sound associated with particular uses. Hours of operations can be prescribed by provisos in the case of conditional uses or as use standards in the Comprehensive Zoning Ordinance. However, as with the noise ordinance, enforcement of the hours of operation requires personnel to monitor and enforce compliance. Staffing during night-time hours is not typical for City personnel, but it would be important to be available at least upon request. Hours of operation may also need to be coordinated with the live outdoor entertainment use's proximity to residential uses or districts, as explained in the subsequent section.

#### *Distance from Residential Uses or Districts*

Distance is another spatial feature that can be thoughtfully deployed to mitigate the adverse impacts of sound, especially the impacts on residential uses or residential districts. The hours of operation of an outdoor live entertainment use in proximity to a residential district may need to be limited in order to respect the residential context. Distance metrics or requirements must also consider the physics of sound, as certain styles or genres of music may travel greater distances than others. One advantage of the use of distance to mitigate the adverse impacts of sound is that a distance requirement physically separating residential uses or districts from outdoor live entertainment does not require enforcement personnel to be effective. The distance can be determined prior to the establishment of the outdoor entertainment space.

### *Outdoor Space Size*

Outdoor space associated with business uses is often relatively small in some of the City's Historic Core and Historic Urban areas. The footprint of historic structures often utilizes most of the lot's buildable area. While entertainment uses can create sound impacts regardless of the size of the outdoor space, there may be some connection with a small space limiting the number of patrons and the thus overall impacts. The close proximity of the performers, their equipment and the patrons may reduce the need for amplification. Consideration of the sizing and siting of the outdoor space utilized for outdoor entertainment may mitigate potential sound impacts on adjacent neighbors.

The directing of sound sources within outdoor spaces is another component of sound mitigation. Low frequencies penetrate buildings more easily than high frequencies. Thus, sound regulations should focus on directing low frequency sound, which transmits in all directions, whereas middle and high frequencies are more narrowly focused in their dispersion and therefore easier to direct within an outdoor space.

### *Design of Outdoor Space*

The physical design of outdoor space intended for live music can be thoughtfully composed to mitigate or control sound, particularly with infill construction. Mitigation through physical design may include soundproofing or the use of barriers and surfaces to deflect or absorb sound. Walls used for sound deflection or absorption need a certain mass and density in order to be effective in mitigating sound. For adjacent properties, the sound attenuation of building in good repair is greater than that of a building in disrepair: the owner of a building in disrepair is more likely to hear ambient sound, as a building's sound insulation properties vary by building type, age, repair, construction, materiality, etc. Outdoor spaces are subject to the vagaries of climate and weather; atmospheric conditions such as wind and low cloud cover can also affect sound properties.

Design requirements for mitigating the negative externalities of outdoor live entertainment have the benefit of not requiring ongoing and regular City enforcement interventions. However, physical design elements can be cost prohibitive for many owners and operators of live music venues. Additionally, the review and approval of such design elements by the City requires a certain level of expertise that the City may not always have at its disposal. Requiring a 3<sup>rd</sup> party review is a potential option; however, in the course of conducting stakeholder interviews, the staff heard there may be limited options for that 3<sup>rd</sup> party.

### *Sound/Noise Abatement Plans*

Sound or Noise abatement plans are required for many uses, such as short-term rentals, and are not limited to outdoor live entertainment. Noise abatement plans may require information about the source equipment, decibel levels, installation of noise shields or barriers, designating a contact person for monitoring sound levels, mechanisms for ensuring that official hours of operations are

observed and possibly public notice. At this point, the City has limited capacity to evaluate the effectiveness of the more technical aspects of noise/sound abatement.

### *Easing Temporary Permit Process to Avoid Permanent Entitlements*

A frequent theme in stakeholder engagements was the uncertainty of the permitting process for planning special events. In particular, one stakeholder attested that permits are only released 72 hours prior to an event, which creates financial anxiety and uncertainty around not knowing whether a permit will be issued or not; this delay is especially problematic when event organizers have obligations for equipment rentals, deposits and other contracts which need to be finalized well in advance of the event date. At the same time, City Special Events staff believe based on their own peer city review that New Orleans is one of the most permissive cities in the United States for special events. Permitting staff also note that incomplete applications are common. To make the special event permit system a more palatable system, operators proposed an ideal permit issuance of 120 days before the event is to be held in order to align the permitting process more closely with the business operations of live music event production. However, raising the ability of permitting staff to be more proactive in working with applicants would likely require increased staffing levels.

Although permanent entitlements can include provisos or only be permitted for certain hours of operation, with later events requiring a special permit, the temporary permitting process for special events can provide both indoor and outdoor entertainment event permissions without conferring permanent entitlements. This has two main benefits: (1) enforcement against problem operators is much easier because issuing permits can be discontinued; and (2) neighbors are more willing to support the events knowing that there is no permanent entitlement.

Other complaints regarding the permitting process center on the One Stop experience. Because every second line and special event must be processed through the same office, the queue is long and capacity is maxed out, which can make it difficult to obtain a permit in a timely manner. In order to maximize certainty for operators concerning the permitting process and reduce the number of times applicants must go to the One Stop for permits, and thus also reduce the volume of throughput processed by the One Stop on a daily basis, a Special Events License could be issued and renewed annually, in lieu of one-off permits, with a complaint-based quality control. This could entitle the licensee to either a prescribed number and set dates of events, perhaps with greater numbers depending on zoning or other neighborhood factors.

## **Zoning Recommendations**

The Study describes land uses where outdoor live entertainment may be contemplated and considers potential amendments to the CZO for the following uses:

### *Temporary Special Events*

- Increase the number of temporary events commercial and institutional uses may hold allowing 2-3 times per week. This should be available through issuance of a single permit for up to all days of the year when entertainment would be planned.
- To qualify for the temporary permit, uses should have a license as a commercial or institutional use, be accustomed to serving groups of people, and have permanent public restroom facilities. Extra provision of handicapped accessible temporary restrooms may be allowed.
- Tables and chairs should occupy at least 50% of the outdoor floor area (not including landscape areas.)
- Hours are limited to **12pm – 8pm, Mon-Thurs, 12pm-9pm Friday, 11am – 9pm Saturday, 11am-8pm Sunday.**
- Speakers and instruments shall be directed away from adjacent residences to the greatest extent possible.
- Require rear yard buffer equivalent to the required rear yard, or a minimum of 15 ft. whichever is greater.
- Require a noise/sound abatement plan for mitigation and complaints.
- The temporary permit shall be posted in a location visible to the public near the business entrance.
- Documentation of repeated violations may result in revocation of a temporary permit. Complaints of violations must be verified by City officials.

### *Outdoor Amphitheater*

- Authorize in EC Educational Campus, LI Light Industrial, S-LM Lake Marina, C-2 General Commercial, and C-3 General Commercial Districts.
- Authorize as a permitted use in the OS-G Open Space Greenway District.
- Establish parking standards for stand-alone outdoor amphitheaters that are not located in parks.

### *Outdoor Amusement Facility*

- Authorize outdoor live entertainment as an ancillary use with **Hours limited to 12pm – 8pm, Mon-Thurs, 12pm-9pm Friday, 11am – 9pm Saturday, 11am-8pm Sunday**
- The main amusement facility must remain open while any ancillary outdoor live entertainment takes place.

- Add Outdoor Amusement Facilities to the uses that are authorized to provide Live Entertainment – Secondary Use. For any hours that would exceed the “ancillary” hours above, the live entertainment would need to be authorized as Live Entertainment – Secondary Use.
- Amend use standards to require a 15 ft. buffer area between the outdoor entertainment area and a residential district.
- Require a noise/sound abatement plan for mitigation and complaints.

*Live Entertainment – Secondary Use*

- Establish hours for outdoor Live Entertainment – Secondary Use that are **limited to 12pm – 8pm, Mon-Thurs, 12pm-9pm Friday, 11am – 9pm Saturday, and 11am-8pm Sunday.**
- Limit the number of outdoor live performances to 2-3 times per week.
- Clarify in the use standards that the closed doors and windows requirement applies only to indoor live entertainment – secondary use.
- Add Outdoor Amusement Facilities to the uses that are authorized to provide Live Entertainment – Secondary Use.
- Delete the sentence “outdoor live entertainment areas located within thirty (30) feet of a residential district shall be a conditional use.”
- In the zoning districts where live entertainment – secondary use is a permitted use, modify to P/C with a footnote stating that “outdoor live entertainment areas located within 300 feet of a residential district or residential use shall be a conditional use.”
- Amend use standards to require a 15 ft. buffer area between the outdoor event area and a residential district.
- Clarify the regulation for Vieux Carre districts, which states “music of any kind is prohibited outside the building, unless approved through the conditional use process.”
- Make the use P/C in the C-3 General Commercial and LI Light Industrial Districts.
- Allow live entertainment – secondary use in distilleries and wineries.
- Outdoor space counts towards floor area, which is still limited by the base zoning district.
- A sound/noise abatement plan is already required.

*Reception Facility*

- In the zoning districts where reception halls are permitted, change the permission to “P/C” with a footnote indicating that a reception hall’s outdoor event area is a conditional use if within 300 feet of a residential district.
- Delete the 200 ft. distance requirement between reception halls and residential districts.
- Amend the use standards to indicate that closed doors and windows requirement applies only to indoor live entertainment.
- Delete the prohibition of outdoor music/entertainment.

- Outdoor Live Entertainment Hours limited to **4pm – 8pm, Monday thru Friday; 11am – 8pm Saturday and Sunday; 11am - 9pm on Friday and Saturday.**
- Amend use standards to require a 15 ft. buffer area between the outdoor event area and a residential district.
- Require a noise/sound abatement plan for mitigation and complaints.
- Speakers and instruments shall be directed away from adjacent residences to the greatest extent possible.

#### *Public Market*

- Booths, their circulation areas, permanent structures, and setbacks from property lines shall constitute at least 50% of the site area.
- A sound/noise abatement plan shall be provided for mitigation and complaints.
- Require a 15 ft. buffer area between the outdoor live entertainment area and a residential district.

#### *Cultural Facility*

- Clarify in the use standards that outdoor special events or receptions in residential districts shall not extend beyond the existing hours of operation, which are: 8am to 10pm on Mondays through Thursdays; 8am to 12 Midnight on Friday through Sunday.
- Outdoor live entertainment hours of operation should be permitted in non-residential districts, limited to **12pm – 8pm, Mon-Thurs, 12pm-9pm Friday, 11am – 9pm Saturday, and 11am-8pm Sunday.**
- Limit the number of outdoor special events or receptions to 2-3 occasions per week.

#### *Arts & Cultural Overlay Districts*

- For businesses within an Arts & Cultural Overlay, the hours allowed for outdoor live entertainment may be longer, such as **12pm to 10pm Monday thru Friday and 11am to 10pm Saturday and Sunday.**
- Hours may be adopted to the overlays on a case-by-case basis, since regulations already vary.
- Number of times live entertainment is permitted per week may be more frequent than sites not within AC Overlays.

### **Planning Recommendations**

#### *Provide Support for Revision of the Noise/Sound Ordinance*

Upon adopting a new noise/sound ordinance that is fair and enforceable, the City may then wish to further amend land use regulations that are based on compliance with the ordinance. These amendments may include requirements for sound studies, sound meters, solid fencing or walls,

sound-absorbing outdoor building materials, etc. The Outdoor Live Entertainment Study makes the following additional recommendations:

- Allow historic music venues to be reestablished at sites where such former use is identified.
- Conduct a comprehensive survey of existing musically, historically, and spiritually important cultural sites should be completed, and site should become eligible for protection.
- Develop a grant program for sound proofing businesses with an emphasis on music venues.
- Ensure equitable fee structures for live entertainment permits.
- The City should take a more prominent role promoting New Orleans culture and live entertainment.
- Create a Music and Culture Advisory Group or Commission.
- Establish a system to notify new property owners and residents of proximity to live entertainment establishments.
- Establish a “Nightlife/Entertainment/Cultural Economy Advocate” or similar position.
- Establish an enforcement system and method for resolving conflicts as it relates to entertainment venues.

## **I. THE PURPOSE OF THE OUTDOOR LIVE ENTERTAINMENT STUDY**

City Council Motion M-20-5 requests that the City Planning Commission study Outdoor Live Entertainment regulations in the Comprehensive Zoning Ordinance, and any correlating requirements in the City Code, to determine if modifications are warranted. In the course of the study and review, the CPC will analyze similarly situated cities' regulations, as well as New Orleans' existing infrastructure – including permitted venues, zoning and overlay districts, temporary permitting structures, both citywide and by neighborhood and study the City's existing codes to prepare recommendations if any amendments to these codes are needed. This includes, but is not limited to: a review of the history of uses, interpretations, and applications of regulations related to outdoor live entertainment; the addition of definitions and use standards and revisions to existing definitions; revisions to permissible and prohibited zoning categories; updates to fee structures; possible remedies to illegal uses; enforcement mechanisms; clarification on existing non-conforming uses; mitigation measures that would promote responsible uses, minimizing nuisances; fostering strong relationships among residents, city agencies, and existing and potential venues; distance limitations; addressing the vesting of land use rights; and ensuring that all regulations encourage and allow for full compliance, promoting opportunities for responsible parties who wish to engage in and benefit from the City's cultural economy. The Outdoor Live Entertainment Study applies to properties citywide.

### **Study Goals Developed by City Planning Staff:**

1. Preserve New Orleans' rich musical heritage through appropriate regulations.
2. Clarify regulations that define, provide use standards and determine appropriate and compatible context for outdoor live entertainment.
3. Resolve contradictions for "Live Entertainment – Secondary Use" and "Reception Facility" relating to the closed door and window policy and distance from residential districts.
4. Explore temporary outdoor live entertainment event permitting regulations and procedures.
5. Reduce any unintended secondary effects of outdoor live entertainment relative to the cultural and residential fabric of the city.
6. Consider how COVID-19 may temporarily or permanently change the way events operate.

## II. CURRENT REGULATIONS FOR OUTDOOR LIVE ENTERTAINMENT IN THE COMPREHENSIVE ZONING ORDINANCE

### A. Permitted and Conditional Uses

#### Outdoor Amphitheater

As written and interpreted, the Comprehensive Zoning Ordinance (CZO) specifically designates one main use as potentially allowing outdoor live entertainment: Outdoor Amphitheater. The definition is provided below:

***Outdoor Amphitheater.** An outdoor structure that accommodates an audience for concerts, public speaking, or other live entertainment, which is open to the general public, with or without an admission charge. An outdoor amphitheater includes band shell structures.*

#### Outdoor Amusement Facility

An Outdoor Amusement Facility is intended to be a facility with some level of active recreation or amusement by customers. The definition does not specifically include outdoor live entertainment; however, the provision of live entertainment may sometimes be desired as complementary to such a facility. The lack of authority for an Outdoor Amusement Facility to provide live entertainment or serve alcoholic beverages does not preclude such sales at a connected restaurant or bar, so long as separate approval is obtained for the Restaurant, Bar, or Live Entertainment – Secondary Use. The Safety & Permits Department has interpreted that an Indoor Amusement Facility classification necessitates some interactivity between participants and spectators for live entertainment. Though this interpretation was made concerning indoor amusement facilities, the Department maintains that such interaction between participants and spectators would also be necessary for an Outdoor Amusement Facility. This determination by Safety & Permits resulted in the denial of a restaurant’s plans to add an outdoor music stage in the MU-2 Mixed Use High Intensity District where Outdoor Amusement Facility is a permitted use.<sup>1</sup> The Outdoor Amusement Facility definition is provided below:

***Outdoor Amusement Facility.** Participatory and spectator uses conducted outdoors, which may include partially enclosed facilities. Typical uses include, but are not limited to, miniature golf courses, batting cages, archery ranges, outdoor racetracks, theme parks, and amusement parks. An outdoor amusement facility includes ancillary uses, such as food stands, snack bars, or restaurants for the use of patrons, but do not serve alcoholic beverages.*

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<sup>1</sup> Prior to this interpretation, an Outdoor Amusement Facility with a live entertainment outdoor amphitheater was approved at South Shore Harbor in 2016 (ZD 47/16.)

## Live Entertainment – Secondary Use

Live Entertainment – Secondary Use is specifically allowed as part of a standard restaurant, specialty restaurant, indoor amusement facility, bar, or brewery, and shall be approved separately. Despite the name, Live Entertainment – Secondary Use is listed as a separate use in the list of permitted and conditional uses of the zoning districts. The Comprehensive Zoning Ordinance states that Live Entertainment – Secondary Use “outdoor live entertainment areas located within thirty (30) feet of a residential district shall be a conditional use,” but also requires closed doors and windows during any performance. The Safety & Permits Department has interpreted the closed doors and windows requirement as applying to outdoor live entertainment, thus making it impossible to permit without a waiver of that standard. The definition for Live Entertainment – Secondary use is provided below.

***Live Entertainment – Secondary Use.** Any one (1) or more of any of the following live performances, performed live by one (1) or more persons, whether or not done for compensation and whether or not admission is charged: musical act, theatrical play or act, including stand-up comedy, magic, dance clubs, and disc jockey performances using vinyl records, compact discs, computers, or digital music players when the disc jockey is in verbal communication with the clientele of the establishment. Live entertainment - secondary use shall be part of a standard restaurant, specialty restaurant, indoor amusement facility, bar, or brewery, and shall be approved separately. A standard restaurant, specialty restaurant, indoor amusement facility, or bar may be open to the public when no live performances are scheduled. Live entertainment - secondary use does not include:*

*A. Any such activity performed for the practice or private enjoyment of the residents of a dwelling and their guests.*

*B. Any adult uses.*

*C. Periodic entertainment at educational facilities or places of worship, performances at cultural facilities, performances at reception facilities, performances at weddings or similar religious events, the playing of recorded music over speakers without a disc jockey, poetry readings, or spoken word performances.*

*D. Musical accompaniment for patrons at a restaurant (standard or specialty), in conformance with the following use standards:*

*1. During the performance of any musical accompaniment, all doors and windows in the restaurant shall remain closed. Any amplification used in support of a musical accompaniment shall be directed towards the patrons of the restaurant, and not toward any door, window or outdoor space.*

*2. No cover charge shall be charged for any performance of any musical accompaniment.*

*3. Full restaurant service shall continue during the performance of any musical accompaniment.*

4. No more than ten percent (10%) of a restaurant's seating area may be dedicated to a staging area for any performance of musical accompaniment.

5. Aside from the portion of the restaurant seating area dedicated to the staging of the musical accompaniment, no restaurant seating may be removed or relocated during the performance in order to accommodate an audience and/or dance area.

6. Performance of the musical accompaniment shall not be permitted beyond 10:00 p.m. on Sundays through Wednesdays, or beyond midnight on Thursdays through Saturdays.

7. Musical accompaniment shall only be performed in the interior of a restaurant; outdoor musical accompaniment shall be subject to the general Live Entertainment – Secondary Use regulations, as applicable.

E. Outdoor musical accompaniment accessory to a public market during its hours of operation.

Any musical accompaniment for patrons at a restaurant that is not in conformance with the above standards shall be included within the definition of Live entertainment – Secondary Use above and shall be subject to the applicable regulations. Notwithstanding anything herein to the contrary, any musical accompaniment for patrons at a restaurant within any Vieux Carré District shall be included within the definition of Live Entertainment – Secondary Use.

### Reception Facility

Reception Facilities are entitled to provide live entertainment ancillary to the reception and many also include outdoor spaces. Use standards have language that may be somewhat contradictory about whether the outdoor space can be used for live entertainment: “[a]ll events shall be held within a completely enclosed building. Live entertainment, if permitted as part of scheduled events, is subject to a closed doors and windows policy and compliance with the City of New Orleans Noise Ordinance. Music of any kind is prohibited outside the building, unless approved through the conditional use process.” It is unclear whether “music of any kind” refers to only recorded music or if live entertainment could be approved through the conditional use process. The definition of Reception Facility is copied below.

**Reception Facility.** *An establishment that functions as a hosting and rental facility or banquet hall for private events including, but not limited to, wedding receptions, holiday parties, and fundraisers, with food and beverages that are prepared and served on site or by a caterer to invited guests during intermittent dates and hours of operation. A reception facility is not operated as any kind of restaurant or bar with regular hours of operation. Live entertainment, excluding adult uses, may be included as an ancillary use of the private event and is not subject to a separate approval. Any business operating as a designated reception facility is not considered casual, temporary, or illegal due to the nature of the business operating intermittently for scheduled events with food and beverage service at the request of clients. Events scheduled by non-owners and/or operators shall be held a*

*minimum of fifteen (15) times per year to uphold a legal operating status as a reception facility.*

### Public Market

A Public Market is a multi-vendor, outdoor or open-air use such as the French Market. In a recent text amendment, a Public Market was given the right to provide “musical accompaniment” as an ancillary use during the Public Market’s authorized hours of 7am to 8pm.

***Public Market.** A recurring assembly of multiple vendors selling art, crafts, edible items, packaged food or beverages, produce, and/or other similar merchandise directly to retail customers in a covered or uncovered open-air setting.*

### Cultural Facility

A cultural facility provides cultural services and facilities that can be quite a neighborhood amenity or even a destination. Museums and other such facilities can be popular for special events and receptions, which are considered so integral that those ancillary uses are included in the definition.

***Cultural Facility.** A use that is open to the public and provides cultural services and facilities including, but not limited to, libraries, museums, aquariums, zoos, botanical gardens, and historical societies. A cultural facility may have ancillary retail uses, that offers items related to the facility for sale, and ancillary restaurants, which are only open during the hours of operation of the facility. A cultural facility may hold special events and receptions on-site, including events that take place after closing hours.*

## **B. Use Standards**

CZO standards for the aforementioned uses are provided below. There are no general standards for Outdoor Amphitheater; however, the OS-CBD Open Space Central Business District has standards specific to Outdoor Amphitheater only in that district.

### **7.2.B.3 Outdoor Amphitheater in the OS-CBD Central Business Open Space District**

*a. Outdoor amphitheater uses are permitted in the OS-CBD a maximum of three (3) times per week. Uses exceeding three (3) times per week shall obtain special event permits or shall require a conditional use.*

*b. Hours of operation are restricted to the following:*

*i. Monday through Sunday from 10:00 a.m. to 10:00 p.m.*

*c. Outdoor amphitheater shall be oriented away from residences to the greatest extent feasible.*

### **20.3.E Amusement Facility, Indoor or Outdoor**

*1. An indoor or outdoor amusement facility shall submit the following impact management plans, to be reviewed by the Director of Safety and Permits, and all other relevant City agencies:*

- a. A noise abatement plan.
  - b. A security and operation plan. The security plan shall include the provision of exterior security cameras.
2. If a standard restaurant or bar is allowed within the zoning district, such uses may be included as part of the indoor amusement facility so long as separate approval is obtained for the standard restaurant or bar. If alcoholic beverages are served, the applicant shall submit a summary of the number and location of places of worship, educational facilities, and parks and playgrounds within three-hundred (300) feet of the proposed location, which may trigger a prohibition as part of Section 10-110 of the City Code.
  3. If the use plans an increase in intensity, such as an expansion of floor area or increase in permitted occupancy, the security and operation plan shall be updated and resubmitted for approval. A revised security and operation plan shall be approved prior to the issuance of any permits.
  4. The security and operation plan may be revised by the property owner or person authorized in writing by the owner. New plans shall be resubmitted for approval.

**20.3.JJ Live Entertainment – Secondary Use and Live Performance Venue**

1. Live entertainment - secondary may only be established when allowed within a zoning district and in conjunction with a bar, standard restaurant, indoor amusement facility, or brewery.
2. Live entertainment – secondary use and live performance venues shall submit a noise abatement plan, to be reviewed by the Director of Safety and Permits, and all other appropriate City agencies, which shall address the intended use of amplification, noise levels, and need for soundproofing. Outdoor live entertainment areas located within thirty (30) feet of a residential district shall be a conditional use.
3. Live entertainment - secondary use and live performance venues shall submit a security and operation plan, with the following added:
  - a. For live entertainment – secondary use, the days and hours of operation for the establishment’s general operations as a standard restaurant or bar, and the days and hours of operation for the live entertainment component.
  - b. The configuration of the live entertainment area within the establishment.
  - c. Loading areas.
  - d. All live entertainment – secondary use and live performance shall provide exterior security cameras.
4. Live entertainment – secondary use and live performance venues shall submit a summary of the number and location of places of worship, educational facilities, and parks and playgrounds within three-hundred (300) feet of the proposed location.
5. Windows and doors shall be closed during live entertainment performances and compliance with the City of New Orleans Noise Ordinance is required. In the Vieux Carré

*Districts, music of any kind is prohibited outside the building, unless authorized through the conditional use process.*

*6. If the live entertainment - secondary use and live performance venues use plans an increase in intensity, such as an expansion of floor area, increase in live performance area or increase in permitted occupancy, a security and operation plan shall be updated and resubmitted for approval. Revised security and operation plans shall be approved prior to the issuance of any permits.*

*7. Security and operation plans may be revised by the property owner or person authorized in writing by the owner. New plans shall be resubmitted for approval.*

*8. Because live entertainment – secondary use is only allowed with a bar, standard restaurant, indoor amusement facility, or brewery, when the submittal requirements of live entertainment – secondary use and standard restaurant or bar are duplicated, only one (1) set of submittal requirements is required to be submitted and updated.*

### **20.3.WW Reception Facility**

*1. A general admission fee or any other monetary donations (payment at the door to the general public) for entrance is prohibited, with the exception of fundraisers or events for bona fide non-profit organizations, places of worship or educational facilities.*

*2. All events shall be held within a completely enclosed building. Live entertainment, if permitted as part of scheduled events, is subject to a closed doors and windows policy and compliance with the City of New Orleans Noise Ordinance. Music of any kind is prohibited outside the building, unless approved through the conditional use process.*

*3. Outdoor lighting shall be directed away from adjacent residentially zoned property.*

*4. Hours of operation are restricted to 10:00 a.m. and 12:00 midnight Sunday through Thursday. Hours of operation are restricted to 10:00 a.m. and 4:00 a.m. Friday through Saturday.*

*5. A minimum distance of two-hundred (200) feet is required between any new reception facility and the nearest residential district.*

### **20.3.TT Public Market**

*1. Hours of operation are limited to 7:00 a.m. to 8:00 p.m., unless otherwise extended by the provisions of an overlay zoning district.*

*2. All size restrictions shall be consistent with the retail sales size restrictions in the zoning district, if applicable.*

*3. No portion of a public market may encroach onto the public right-of-way or be placed in such a way that requires customers to occupy the sidewalk or the public right-of-way.*

*4. The sale of food for consumption on or off the premises requires licensing by the City and approval by the Department of Health.*

5. *The sale of firearms, adult retail goods, and sexually-oriented devices is prohibited.*
6. *The retail sale of packaged alcoholic beverages is only allowed where such use is allowed as a permitted use in the zoning district in which the public market is located, or when approved through the conditional use process where such use is a conditional use in the zoning district where the public market is located.*
7. *In all districts except the Historic Core and Open Space Districts, fencing and landscaping shall be provided along all interior side and rear property lines of a site on which a public market is located. A fencing and landscaping plan shall be submitted for the review and approval of the Executive Director of the City Planning Commission.*

**20.3.R Cultural Facility**

*Where located in any residential district, hours of operation for events at cultural facilities are limited to 8:00am to 10:00pm on Mondays through Thursdays, and 8:00am to 12:00 midnight on Fridays, Saturdays, and Sundays.*

### **C. District Permissions**

The tables below show the zoning districts which allows or may have originally been intended to allow outdoor live entertainment. As described earlier, use standards as currently interpreted may now prohibit outdoor live entertainment in some cases.

#### **Article 7 - Open Space Districts**

	Outdoor Amphitheater	Outdoor Amusement Facility	Live Entertainment – Secondary Use	Reception Facility	Public Market	Cultural Facility
OS-R Open Space Regional	P	P		P	P	P
OS-CBD Open Space Central Business District	P**				P	P
OS-G Open Space Greenway		C			P	C

\*\*Outdoor Amphitheaters’ hours of operation are restricted to 10am to 10pm, a maximum of 3 days per week, and shall be oriented away from residences to the greatest extent feasible.

#### **Article 10 - Historic Core Non-Residential Districts**

	Outdoor Amphitheater	Outdoor Amusement Facility	Live Entertainment – Secondary Use	Reception Facility	Public Market	Cultural Facility
VCC-1 Vieux Carré Commercial						C
VCC-2 Vieux Carré Commercial					P	P
VCE Vieux Carré Entertainment			P			C
VCE1 Vieux Carré Entertainment			P			C
VCS Vieux Carré Service					P	P
VCS-1 Vieux Carré Service					P	P

Carré Service						
VCP Vieux Carré Park						C
HMC-1 Historic Marigny/Treme/Bywater Commercial					P	P
HMC-2 Historic Marigny/Treme/Bywater Commercial			C	C	P	P
HM-MU Historic Marigny/Treme/Bywater Mixed Use			C		P	P

**Article 12 - Historic Urban Neighborhoods Non-Residential Districts**

	Outdoor Amphitheater	Outdoor Amusement Facility	Live Entertainment – Secondary Use	Reception Facility	Public Market	Cultural Facility
HU-BIA Neighborhood Business						C
HU-B1 Neighborhood Business				C	P	C
HU-MU Neighborhood Mixed Use			C	C	P	C

**Article 14 - Suburban Neighborhoods Non-Residential Districts**

	Outdoor Amphitheater	Outdoor Amusement Facility	Live Entertainment – Secondary Use	Reception Facility	Public Market	Cultural Facility
S-B1 Business			C	C		C
S-B2 Pedestrian Oriented Corridor Business			C	C	P	C
S-LB1 Lake Area			C		P	C

Neighborhood Business						
S-LB2 Lake Area Neighborhood Business			C	P	P	C
S-LC Lake Area General Commercial			C	P	P	C
S-MU Neighborhood Mixed Use			C	C	P	C
S-LM Lake Area Marina		P	C		P	

**Article 15 - Commercial Center Districts**

	Outdoor Amphitheater	Outdoor Amusement Facility	Live Entertainment – Secondary Use	Reception Facility	Public Market	Cultural Facility
C-1 General Commercial			C	C	P	P
C-2 General Commercial		C	P*	P	P	P
C-3 General Commercial		P	C	P	P	P
MU-1 Mixed Use Medium Intensity		C	C	P	P	P
MU-2 Mixed Use High Intensity		P	P*	P	P	P
EC Educational Campus		C			P	P

\*Classified as conditional uses within breweries

### Article 16 – Centers for Industry

	Outdoor Amphitheater	Outdoor Amusement Facility	Live Entertainment – Secondary Use	Reception Facility	Public Market	Cultural Facility
LI Light Industrial				P		
HI Heavy Industrial						
MI Maritime Industrial						
BIP Business Industrial Park						

### Article 17 - Central Business Districts

	Outdoor Amphitheater	Outdoor Amusement Facility	Live Entertainment – Secondary Use	Reception Facility	Public Market	Cultural Facility
CBD-1 Core Central Business			P	P	C	P
CBD-2 Historic Commercial and Mixed Use			P*	P	C	P
CBD-3 Cultural Arts			P	P	C	P
CBD-4 Exposition	P	P	P	P	C	P
CBD-5 Urban Core Neighborhood Lower Intensity Mixed Use			C	C	P	P
CBD-6 Urban Core Neighborhood			C	P	P	P

CBD-7 Bio- Science			P*	P	C	
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\*Classified as conditional uses within breweries

Cultural facilities are also authorized one as conditional uses in all residential zoning districts except the HMR-3 Historic Marigny/Treme/Bywater Residential District.

**Article 18 - Arts & Cultural Overlay Districts**

Article 18 of the Comprehensive Zoning Ordinance contains overlay zoning districts that are supplemental regulations to the base zoning districts. There are four different types of Arts & Cultural (AC) Overlay Districts that generally serve to make live entertainment more permissive than the base district. Additionally, cultural facilities are elevated to permitted uses in the AC Overlays where they might otherwise be conditional uses. The Arts & Cultural Overlays do not provide specific changes for regulations concerning outdoor live entertainment.

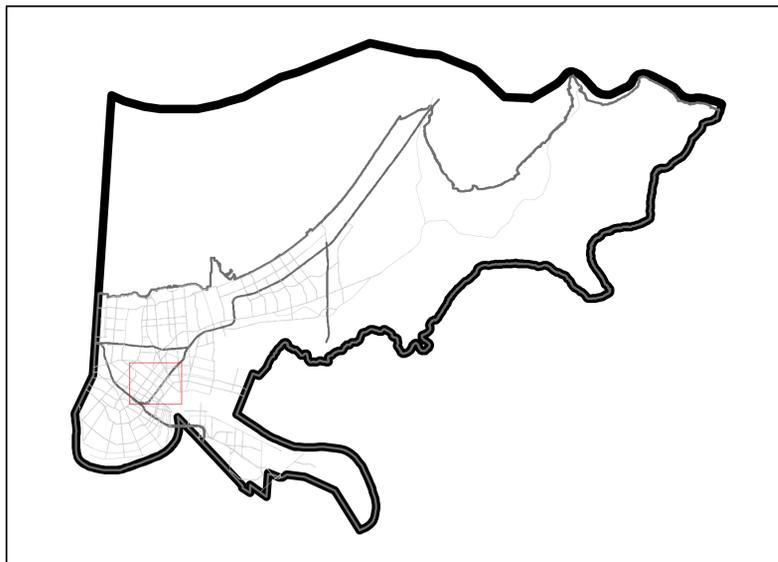
The AC Overlays are shown on the following pages.



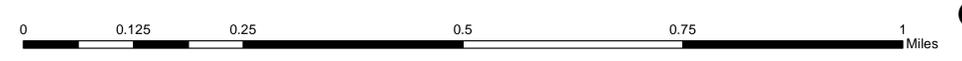
# AC-1 Arts and Culture Diversity Overlay District

## Legend

-  AC-1 Arts and Culture Diversity Overlay District
-  Freeway
-  Major Arterial; Ramp
-  Collector; Local; Minor Arterial
-  Open Space
-  Water Bodies



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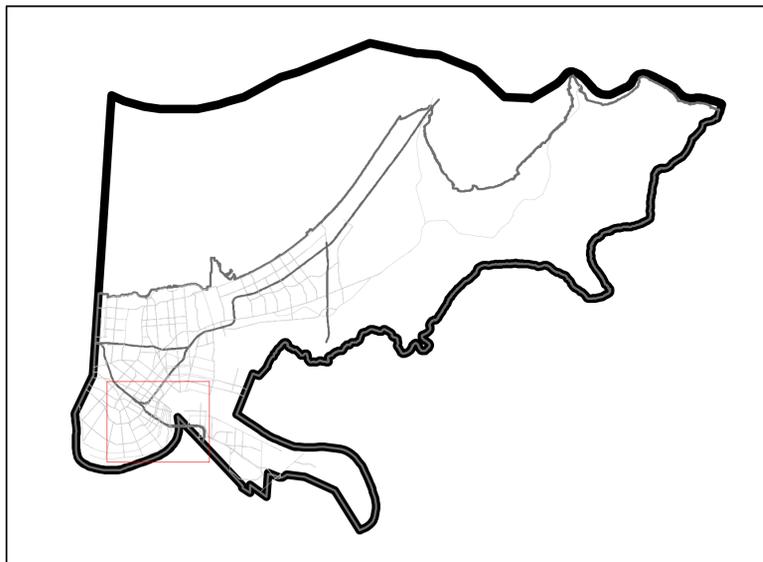
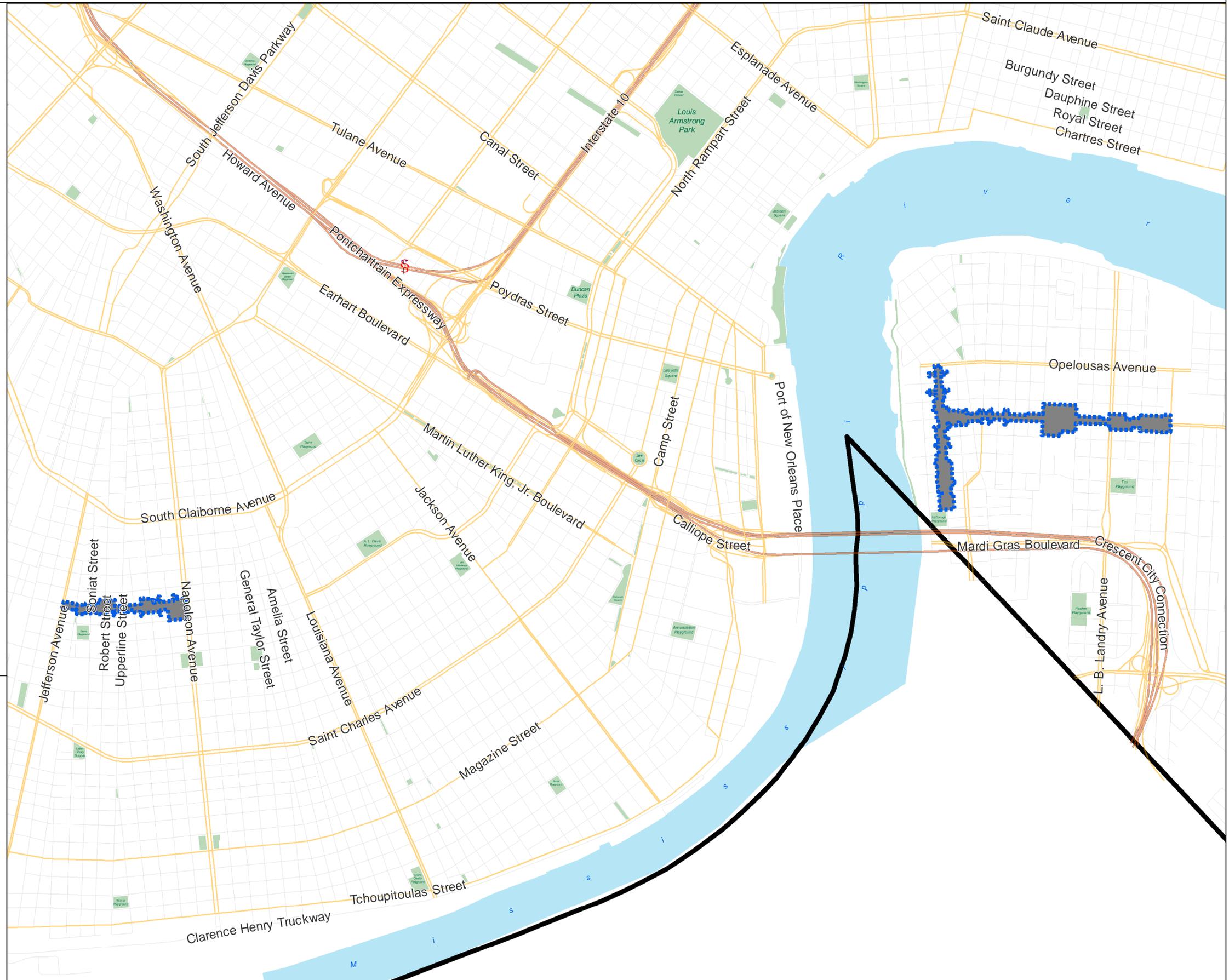
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# AC-2 Arts and Culture Diversity Overlay District

## Legend

-  AC-2 Arts and Culture Diversity Overlay District
-  Freeway
-  Major Arterial; Ramp
-  Collector; Local; Minor Arterial
-  Water Bodies
-  Open Space



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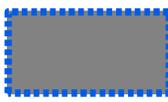


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# AC-3 Arts and Culture Diversity Overlay District

## Legend

-  AC-3 Arts and Culture Diversity Overlay District
-  Major Arterial; Ramp
-  Collector; Local; Minor Arterial
-  Water Bodies
-  Open Space



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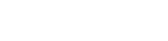
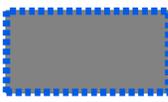


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# AC-4 Arts and Culture Diversity Overlay District

## Legend

-  Freeway
-  Major Arterial; Ramp
-  Collector; Local; Minor Arterial
-  AC-4 Arts and Culture Diversity Overlay District
-  Water Bodies
-  Open Space



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**Maximum Total Floor Area for Commercial Uses by Zoning District (Articles 7 through 17)**

Maximum total floor area for commercial uses is controlled by the zoning districts as shown in the tables below.

<b>Open Space Districts</b>	<b>Maximum Square Feet</b>
OS-R Open Space Regional	None
OS-CBD Open Space Central Business District	None
OS-G Open Space Greenway	None

<b>Historic Core Non-Residential Districts</b>	<b>Maximum Square Feet</b>
VCC-1 Vieux Carre Commercial	None
VCC-2 Vieux Carre Commercial	None
VCE Vieux Carre Entertainment	None
VCE-1 Vieux Carre Entertainment	None
VCS Vieux Carre Service	None
VCS-1 Vieux Carre Service	None
VCP Vieux Carre Park	None
HMC-1 Historic Marigny, Treme, Bywater Commercial	Up to 3,000 sf as permitted use; between 3,000 and 5,000 sf requires conditional use
HMC-2 Historic Marigny, Treme, Bywater Commercial	Up to 10,000 sf as a permitted use; over 10,000 requires conditional use
HM-MU Historic Marigny, Treme, Bywater Mixed Use	None

<b>Historic Urban Non-Residential Districts</b>	<b>Maximum Square Feet</b>
HU-BIA Neighborhood Business	Up to 5,000sf as permitted use; over 5,000 requires conditional use
HU-B1 Neighborhood Business	Up to 5,000sf as permitted use; over 5,000 requires conditional use

HU-MU Neighborhood Mixed Use	Up to 5,000sf as permitted use; over 5,000 requires conditional use
------------------------------	---------------------------------------------------------------------

<b>Suburban Neighborhoods Non-Residential Districts</b>	<b>Maximum Square Feet</b>
S-B1 Suburban Business	Up to 5,000sf as permitted use; over 5,000 requires conditional use
S-B2 Pedestrian Oriented Corridor Business	Up to 25,000sf as permitted use; over 25,000 requires conditional use
S-LB1 Lake Area Neighborhood Business	Up to 5,000sf as permitted use; over 5,000 requires conditional use
S-LB2 Lake Area Neighborhood Business	Up to 5,000sf as permitted use; over 5,000 requires conditional use
S-LC Lake Area General Commercial	None
S-MU Suburban Neighborhood	Permitted up to 5,000sf of total floor area (ground floor only) Conditional use approval required for 5,000 or more square feet of total floor area No stand-alone commercial uses are allowed unless on the same lot as multi-family residential
S-LM Lake Marina	None

<b>Centers for Industry</b>	<b>Maximum Square Feet</b>
LI Light Industrial	None
HI Heavy Industrial	None
MI Maritime Industrial	None
BIP Business Industrial Park	None

<b>Commercial Center Districts</b>	<b>Maximum Square Feet</b>
C-1 General Commercial	None
C-2 General Commercial	None
C-3 General Commercial	None
MU-1 Mixed Use Medium Intensity	None
MU-2 Mixed Use High Intensity	None

Central Business Districts	Maximum Square Feet
CBD-1 Core Central Business	None
CBD-2 Historic Commercial and Mixed Use	None
CBD-3 Cultural Arts	None
CBD-4 Exposition	None
CBD-5 Urban Core Neighborhood Lower Intensity Mixed Use	None
CBD-6 Urban Core Neighborhood	None
CBD-7 Bio-Science	None

**D. Temporary Outdoor Entertainment Events (Article 21)**

Article 21, Section 21.8. Permitted Temporary Uses of the Comprehensive Zoning Ordinance (CZO) regulates temporary outdoor entertainment events. In all districts, temporary outdoor entertainment events may be authorized on public or private property a maximum of 3 consecutive days per event, with a maximum of 8 events per calendar year. A number of factors concerning the nature and location of the event are considered by the Safety & Permits Department in whether to issue a special event permit. The CZO enumerates the following standards:

***21.8.C.7 Temporary Outdoor Entertainment Events***

*A temporary live entertainment event, such as the performance of live music, revue, or play within outdoor space may be allowed on public or private property. The following standards apply to this temporary use. This does not include temporary reviewing stands, which are regulated separately.*

- a. A management plan is required for review by the Director of Safety & Permits as part of the temporary use permit application that demonstrates the following:
 
  - i. The on-site presence of a manager during the event.*
  - ii. General layout of performance areas, visitor facilities, such as seating areas and restrooms, and all ingress and egress points to the site.*
  - iii. Provision for recycling and waste removal.*
  - iv. The days and hours of operation, including set-up and take-down times.*
  - v. A description of crowd control and security measures.**
- b. Temporary outdoor entertainment events are limited to eight (8) events per calendar year and a maximum duration of three (3) days per event.*

According to the City Code, Section 105.6.53, “[a] Special Event Permit is required through the City of New Orleans One Stop for Permits and Licenses to engage in, operate, or conduct any 'Special Event' not otherwise listed in the 'Permit Section' of this code but by the nature of such

event, structures, systems, equipment, appliances, devices, materials, or activities are governed by provision of this code or in the opinion of the Code Official constitutes a fire or crowd control danger to the public.” Events such festivals, markets, outdoor concerts, races/marathons, professional sporting events, weddings, trade shows, block parties, or second lines require special event permits.

Applications for special event permits are submitted on a rolling basis throughout the year. While applicants can submit their special event permit package as little as (2) weeks prior to their event, the City highly encourages applicants to begin the permitting process at least 90 days in advance.

Special event permit applications require everything from the Special Event Master Application, to an approval letter from the property or business owner, to the name of the clean-up company and copy of the contract. In addition to the Master Application, an event may require the submittal of one (1) or more supplemental applications, including a non-commercial street closure/block party application, an entertainment application, and a special event safety/security application. See Table A for a comprehensive list of application requirements.

**Table A: Special Event Permit Application Attachment Checklist**

<p><b>Master Application</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Approval letter from property owner or business owner</li> <li><input type="checkbox"/> Plot plan/layout of the location showing the tents and their distances from each other (tents less than 12’ apart will be reviewed as one) and the nearest buildings, structures with dimensions, and property line. Please use an image of the area from an online map service (not a hand drawn image). If seating will be provided, show seating/chair arrangements.</li> <li><input type="checkbox"/> Copy of PortoLets contract, waste company contract, and/or other relevant contracts</li> </ul>
<p><b>Supplement A: Special Event Promoter/Vendor</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Promoter-List of vendors (including any food trucks participating)</li> <li><input type="checkbox"/> Stationary Vendor-verification of participation from promoter, occupational license</li> </ul>
<p><b>Supplement B: Non-Commercial Street Closure/Block Party</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Name of Clean-up or Dumpster Company, and copy of contract if available</li> <li><input type="checkbox"/> Petition signed by 100% of the residents, property owners, or property managers</li> <li><input type="checkbox"/> Traffic Impact Study (secured in conjunction with Department of Public Works)</li> </ul>
<p><b>Supplement C: Parade Permit Application</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Name of Clean-up company and copy of contract</li> <li><input type="checkbox"/> Parade route map</li> </ul>
<p><b>Supplement D: Park &amp; Rec Center Booking Request</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Name of Clean-up company and copy of contract</li> </ul>
<p><b>Supplement E: Tent Permit Application</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Certificate of Flame Resistance/Retardant for tent fabric (required for each tent)</li> <li><input type="checkbox"/> Plot plan/layout of the location showing the tents and their distances from each other (tents less than 12’ apart will be reviewed as one) and the nearest buildings, structures with dimensions, and property line. Please use an image of the area from an online map service (not a hand drawn image). If seating will be provided, show seating/chair arrangements</li> </ul>
<p><b>Supplement F: Entertainment Application</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Letter with live seal from a Louisiana Registered Architect of Civil Engineering stating structure capabilities and sizes (Stages, Reviewing Stand, or Bracing).</li> <li><input type="checkbox"/> Plot plan showing a minimum setback of 6 feet from property lines and dimensions of sales area (Concession Stand)</li> </ul>
<p><b>Supplement G: Special Event Safety/Security Application</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> If necessary, attach details regarding how potential hazards may be used in the event. If not using City of New Orleans EMS, copy of contract with private EMS company</li> <li><input type="checkbox"/> Plot plan/layout of the location showing the tents and other details (see Plot Plan details above)</li> </ul>

<b>Supplement H: Tax Exemption for Non-Profits</b>	<input type="checkbox"/> Copy of organization letter issued by IRS or Secretary of State verifying tax exempt status
----------------------------------------------------	----------------------------------------------------------------------------------------------------------------------

*Source: City of New Orleans One Stop Permits & Licenses Special Event Permit Guide & Applications*

The Special Events permitting process may ultimately require additional permits and licenses as well (e.g. temporary alcoholic beverage license, tent permit). The Department of Safety and Permits determines this upon review of the master application, which includes questions such as:

- Will your event involve ANY KIND of the following: (If yes, select all that apply)
  - Live performance(s)?
  - DJ and/or Recorded Music?
  - Loudspeakers or Amplifiers?
  
- Will your event involve ANY of the following: (If yes, select all that apply)
  - Viewing Stands and/or Bracing
  - Stages and/or Risers?

Supplement F is required if an event will provide any sort of entertainment, such as live performance (musical, theatrical, etc.), PA system, DJ or recorded music, sound amplifiers, etc. The form verifies whether the entertainment will take place outdoor, indoors, or both, expected average and maximum sound levels, and requests the types of “noise sources” (e.g. PA system, sound amplification, etc.). The City’s Special Event Guide clarifies that “not all zones allow live outdoor entertainment, such as residential zoned properties.”

Fees for special event permits vary depending on the nature of the event. For example, a temporary alcoholic beverage application triggers at \$250 application processing fee plus either \$135 for beer sales or \$500 for beer, wine, and/or liquor sales. Tents and canopies result in a \$50 fee per tent, stages are assessed a \$190 application fee, and concession stands vary based on whether they are located in a historic district (\$225) or not (\$150). Most events must obtain a promoter occupational license (\$250) and mayoralty permit (\$500.25). Events with three (3) or more vendors are also required a sales tax payment performance bond of \$10,000. Music for entertainment where admission or donations are solicited ranges from \$125.25 to \$375.25 while those events that do not charge admission range from \$100.25 to \$500.25. Non-profits are assessed lesser fees.

### ***Challenges***

According to the Department of Safety and Permits, the special event permit application process can prove complex. This results in a high number of submitted applications that are incomplete. Additionally, the internal review process is substantial—Wednesdays at the Square’s applications, for example, require sign-off from 14 different departments with 14 different rubrics. Stakeholders point to the challenge of planning events despite not knowing if or when their permit(s) will actually be issued. Generally speaking, good actors should expect to receive their permits; however, several factors can contribute to denials. The Fire Department, for example, no longer permits assemblies in any structure that does not have a certificate of occupancy to permit

assemblies (e.g. warehouses, Studio BE). Additionally, the Department of Safety and Permits notes that permits will sometimes be denied for repasts—particularly in cases where the deceased had been murdered—for fear of additional violence breaking out. At the end of the day, special event permits are considered a “privilege not a right.”

Each individual entity is limited to 12 special event permits per year (a permit can, however, include a multi-day event up to 10 days), and many stakeholders find this a roadblock to their desire to more frequently offer events. In addition to a desire to allow these types of events by right, many express interest in compiling the upcoming year’s events onto a single application submittal. Safety and Permits clarified that Wednesdays at the Square actually does submit one application with all 12 proposed dates.

Regarding the allowable special event permits per year, the Comprehensive Zoning Ordinance is inconsistent with Special Event Permit regulations. The CZO specifies that “Special Event Permits are limited to no more than ten (10) times a year for a total of thirty (30) days per year. Performances permitted by a Special Event Permit shall be a minimum of fourteen (14) days apart.”<sup>2</sup>

**E. Off-Street Parking and Loading (Article 22)**

Parking requirements are set by use according to Article 22 of the Comprehensive Zoning Ordinance. Some districts have parking exemptions for a certain amount of gross floor area and other districts – such as those in the CBD or Historic Core – may have no parking requirements.

Use	Minimum Required Vehicle Spaces	Exemptions
<b>Outdoor Amphitheater</b>	None specified	All uses including these are exempt from parking requirements according to the exemptions and flexibilities of Table 22-2 of the CZO.
<b>Outdoor Amusement Facility</b>	1 per 300sf of gross floor area	
<b>Live Entertainment – Secondary Use</b>	N/A – follows the parking requirement of the main use of bar, restaurant, etc.	
<b>Reception Facility</b>	1 per 250sf of gross floor area	
<b>Public Market</b>	None specified	
<b>Cultural Facility</b>	1 per 300sf of gross floor area	

<sup>2</sup> Article 18, Section 18.9.C.3 – Restaurant (AC-1 Arts and Culture Diversity Overlay District), Article 18, Section 18.10.C.3 – Restaurant (AC-2 Arts and Culture Diversity Overlay District), Article 18, Section 18.11.C.3 – Restaurant (AC-3 Arts and Culture Diversity Overlay District), Article 18, Section 18.11.C.6 – Community Center, Cultural Facility, Micro-Brewery, Micro-Distillery, or Wine Shop (AC-3 Arts and Culture Diversity Overlay District), and Article 18, Section 18.12.C.2 – Restaurant (AC-4 Arts and Culture Diversity Overlay District)

**F. Alcoholic Beverage Outlet (ABO) Regulations**

Alcoholic beverages are regulated by Chapter 10 of the City Code.

*Alcohol & Special Events*

Alcohol as it pertains to special events permitting is regulated by Chapter 10, Division 1, Section 10-52 of the City Code. This section allows for the authorization of alcoholic beverage permits in conjunction with special events when such events will not continue for more than three days. The city code further states that no more than 12 such permits may be issued to a single organization within one calendar year. Alcohol beverage permits for a special event issued in accordance with this section are only valid for the dates, times and locations as specified and authorized in the application; alternative dates, times and location may be specified in anticipation of rescheduling due to inclement weather or other extenuating circumstances.

The City Code assesses applicants for alcohol beverage permits according to the following fee schedule:

<b>Fee Schedule</b>		
	Non-Profits	All Others
1) Sale of beverages of low alcoholic content	\$25.00	\$50.00
(2) Sale of beverages of high alcoholic content	\$25.00	\$50.00
(3) Sale of beverages of high and low alcoholic content	\$50.00	\$100.00
(4) Free distribution of alcoholic beverages at picnics or other special events	No charge	
(5) Alcoholic beverage permit processing fee	\$100.00	\$200.00

*Enforcement*

While the Departments of Finance, Safety & Permits, and Law have administrative enforcement jurisdiction, Section 10-4 vests the police powers of enforcement with the provisions of this chapter with the police department.

The Alcoholic Beverage Control Board is also authorized to conduct hearings, suspend or revoked permits, impose remedial sanctions against offenders, and determine appeals from those who have been denied an alcoholic beverage permit by an administrative official

### *Conflicts between ABO Regulations and the CZO*

Special events are also regulated under Article 21, Section 21.8 – Temporary Uses. Table 21-3 tabulates district regulations, timeframes, hours of operation and use standard for various temporary uses. This same table stipulates a maximum of three (3) consecutive days per event, and a maximum of eight (8) events per calendar year, which is in conflict with the ABO regulations cited above. Through stakeholder interviews with Safety & Permits, it was revealed that the department defaults to the more permissive ABO regulation (twelve events) when there is a disparity, otherwise the four events over and above the eight (8) stipulated by the CZO result in a zoning violation. It is thus recommended that this conflict be reconciled such that the regulations in the CZO are consistent with those in the ABO.

### **III. POTENTIAL MITIGATION STRATEGIES**

#### ***Compliance with the Noise/Sound Ordinance***

The noise ordinance is the traditional legal foundation for the regulation of noise and sound at the municipal level. The purview of the sound ordinance is not limited to the regulation of sound and music, but also includes every auditory disturbance from barking dogs to trucks. The existing noise/sound ordinance was drafted and adopted in the 1960s and was deliberately difficult to enforce. The ordinance has also been in effect for so long without updates that it contains zoning districts which no longer exist.

Stakeholder interviews revealed that enforcement of the noise ordinance is fraught with difficulties, if not unconstitutional. Due to the ordinance's shortcomings, enforcement of the noise ordinance has been halted until the ordinance is revised and updated, although the Health Department's proposed revision of the noise ordinance will be delayed due to the COVID-19 pandemic. In particular, the "plainly audible standard" in Chapter 66 is not objective and thus cannot be enforced: what is plainly audible to one person may not be to another based on idiosyncrasies of hearing capacities. The ordinance also specifies the type of device that must be used in taking sound measurements – a technology that is now obsolete.

The City's noise/sound ordinance must also be judicious and circumspect about the sociocultural implications of sound measurement. A-weighting disregards low frequency sound, but C-weighting accounts for low frequency sound and more heavily weights it in final measurement. Certain genres of music have more low frequency components than others, and thus C-weighted scales may discriminate against some forms of music. Because music is a form of protected free speech, it is imperative that the noise ordinance construct a content neutral standard for measuring sound levels to determine allowable levels and that it is written in such a way as to be sensitive to genres, as the overregulation of bass, for example, may discriminate against rap, hip hop or bounce.

The noise/sound ordinance also must clearly delineate enforcement protocols and mechanisms. One proposal regarding enforcement that in stakeholder meetings was that Safety & Permits and the Health Department should be enforcing or citing violations of the sound ordinance, not the New Orleans Police Department. The use of civilian personnel to enforce the sound ordinance might de-escalate otherwise tense or combustible situations, while removing police from the enforcement of the sound ordinance and freeing up police personnel for other duties. Lastly, the noise ordinance is only effective if it is enforced, which thus requires enforcement personnel and the political will to enforce the regulations impartially and fairly.

#### ***Hours of Operation***

Hours of business operations can also be utilized to mitigate the adverse impacts of sound associated with particular uses. Hours of operations can be prescribed by provisos in the case of conditional uses or as use standards in the Comprehensive Zoning Ordinance. However, as with

the noise ordinance, enforcement of the hours of operation requires personnel to monitor and enforce compliance. Staffing during night-time hours is not typical for City personnel, but it would be important to be available at least upon request. Hours of operation may also need to be coordinated with the live outdoor entertainment use's proximity to residential uses or districts, as explained in the subsequent section.

### ***Distance from Residential Uses or Districts***

Distance is another spatial feature that can be thoughtfully deployed to mitigate the adverse impacts of sound, especially the impacts on residential uses or residential districts. The hours of operation of an outdoor live entertainment use in proximity to a residential district may need to be limited in order to respect the residential context. Distance metrics or requirements must also consider the physics of sound, as certain styles or genres of music may travel greater distances than others. One advantage of the use of distance to mitigate the adverse impacts of sound is that a distance requirement physically separating residential uses or districts from outdoor live entertainment does not require enforcement personnel to be effective. The distance can be determined prior to the establishment of the outdoor entertainment space.

### ***Outdoor Space Size***

Outdoor space associated with business uses is often relatively small in some of the City's Historic Core and Historic Urban areas. The footprint of historic structures often utilizes most of the lot's buildable area. While entertainment uses can create sound impacts regardless of the size of the outdoor space, there may be some connection with a small space limiting the number of patrons and the thus overall impacts. The close proximity of the performers, their equipment and the patrons may reduce the need for amplification. Consideration of the sizing and siting of the outdoor space utilized for outdoor entertainment may mitigate potential sound impacts on adjacent neighbors.

The directing of sound sources within outdoor spaces is another component of sound mitigation. Low frequencies penetrate buildings more easily than high frequencies. Thus, sound regulations should focus on directing low frequency sound, which transmits in all directions, whereas middle and high frequencies are more narrowly focused in their dispersion and therefore easier to direct within an outdoor space.

### ***Design of Outdoor Space***

The physical design of outdoor space intended for live music can be thoughtfully composed to mitigate or control sound, particularly with infill construction. Mitigation through physical design may include soundproofing or the use of barriers and surfaces to deflect or absorb sound. Walls used for sound deflection or absorption need a certain mass and density in order to be effective in mitigating sound. For adjacent properties, the sound attenuation of building in good repair is greater than that of a building in disrepair: the owner of a building in disrepair is more likely to

hear ambient sound, as a building's sound insulation properties vary by building type, age, repair, construction, materiality, etc. Outdoor spaces are subject to the vagaries of climate and weather; atmospheric conditions such as wind and low cloud cover can also affect sound properties.

Design requirements for mitigating the negative externalities of outdoor live entertainment have the benefit of not requiring ongoing and regular City enforcement interventions. However, physical design elements can be cost prohibitive for many owners and operators of live music venues. Additionally, the review and approval of such design elements by the City requires a certain level of expertise that the City may not always have at its disposal. Requiring a 3<sup>rd</sup> party review is a potential option; however, in the course of conducting stakeholder interviews, the staff heard there may be limited options for that 3<sup>rd</sup> party.

### ***Sound/Noise Abatement Plans***

Sound or Noise abatement plans are required for many uses, such as short-term rentals, and are not limited to outdoor live entertainment. Noise abatement plans may require information about the source equipment, decibel levels, installation of noise shields or barriers, designating a contact person for monitoring sound levels, mechanisms for ensuring that official hours of operations are observed and possibly public notice. At this point, the City has limited capacity to evaluate the effectiveness of the more technical aspects of noise/sound abatement.

### ***Easing Temporary Permit Process to Avoid Permanent Entitlements***

A frequent theme in stakeholder engagements was the uncertainty of the permitting process for planning special events. In particular, one stakeholder attested that permits are only released 72 hours prior to an event, which creates financial anxiety and uncertainty around not knowing whether a permit will be issued or not; this delay is especially problematic when event organizers have obligations for equipment rentals, deposits and other contracts which need to be finalized well in advance of the event date. At the same time, City Special Events staff believe based on their own peer city review that New Orleans is one of the most permissive cities in the United States for special events. Permitting staff also note that incomplete applications are common. To make the special event permit system a more palatable system, operators proposed an ideal permit issuance of 120 days before the event is to be held in order to align the permitting process more closely with the business operations of live music event production. However, raising the ability of permitting staff to be more proactive in working with applicants would likely require increased staffing levels.

Although permanent entitlements can include provisos or only be permitted for certain hours of operation, with later events requiring a special permit, the temporary permitting process for special events can provide both indoor and outdoor entertainment event permissions without conferring permanent entitlements. This has two main benefits: (1) enforcement against problem operators is much easier because issuing permits can be discontinued; and (2) neighbors are more willing to support the events knowing that there is no permanent entitlement.

Other complaints regarding the permitting process center on the One Stop experience. Because every second line and special event must be processed through the same office, the queue is long and capacity is maxed out, which can make it difficult to obtain a permit in a timely manner. In order to maximize certainty for operators concerning the permitting process and reduce the number of times applicants must go to the One Stop for permits, and thus also reduce the volume of throughput processed by the One Stop on a daily basis, a Special Events License could be issued and renewed annually, in lieu of one-off permits, with a complaint-based quality control. This could entitle the licensee to either a prescribed number and set dates of events, perhaps with greater numbers depending on zoning or other neighborhood factors.

#### **IV. MASTER PLAN – ARTS AND CULTURE**

Chapter 6 of the Master Plan identifies a number of challenges confronting the arts and culture communities and recommends various actions in order to redress them. Each action is also assigned to the relevant department.

Many of New Orleans most important cultural sites and opportunities are in danger of being lost. These may take the form of crumbling buildings, such as the Dew Drop Inn, Eagle Saloon, and Karanofsky Tailor shop, the loss of neighborhood music venues, or the displacement of musicians and culture bearers themselves. If New Orleans does not take action, much of this damage and loss may become irreversible.

Because of the prominent role culture plays in the identity of the City and its citizens, New Orleans has a unique opportunity to create a groundbreaking cultural preservation program, focused on not only protecting historic sites, but also providing space for living culture to grow and develop. The following initiatives will begin this process.

#### **RECOMMENDED ACTIONS**

1. A comprehensive survey of existing musically, historically, and spiritually important cultural sites should be completed, and site should become eligible for protection.

Who: Cultural community; universities; CPC

When: First five years

Resources: Staff time; volunteers; grants, non-profits

Protection of existing cultural sites has been haphazard at best, and many continue to be lost, most recently Club Desire in the Upper 9th Ward. A community led survey must be undertaken to examine which sites remain, as well as their current status and threat level. Once sites are identified, the appropriate steps for preservation can be undertaken.

2. Allow historic music venues to be reestablished at sites where such former use is identified.

Who: CPC

When: First five years

Resources: Staff time

The vast majority of New Orleans' neighborhood music venues and performance spaces are non-conforming uses and in constant danger of permanently losing their ability to have live entertainment. If one of these bars or venues was to close for more than 6 months, they would no longer be able to host live music, no matter how long they had done so previously. In order to preserve the location as an important cultural space, venues and barrooms that can prove a history of hosting live entertainment should be able to be reestablished as music venues.

3. A grant program for sound proofing businesses, similar to a façade grant program, should be developed and implemented, with an emphasis on music venues and barrooms.

Who: Office of Cultural Economy, NOLA Business Alliance, HDLC

When: First five years

Resources: Staff time

The most common complaint/point of opposition to live music venues is potential or actual excessive sound. This problem is especially acute in neighborhoods where the buildings are old and in close proximity. To mitigate this, the City should develop a grant program that would allow small, locally owned cultural businesses access to sound proofing. This could be carried out in a process similar to façade improvement grants, and within a few years, because of the finite number of cultural business, virtually all located in historic neighborhoods could be soundproofed.

4. The permitting process and fee structure for cultural businesses should be streamlined, and a user friendly guide to the process created.

Who: Office of Cultural Economy, NOLA Business Alliance, Safety and Permits

When: First five years<sup>SEP</sup>

Resources: Staff time

Explore the fee structure for live entertainment venues, and create a user friendly guide. In addition, live entertainment venues that charge a cover should not have to pay a higher fee than those that offer ‘free’ entertainment, as that creates a disincentive to pay performers a fair wage, and devalues their work and product.

## V. PUBLIC HEARING AND STAKEHOLDER MEETINGS

On March 10, 2020, the City Planning Commission held a public hearing to listen to the public's testimony in regards to the present study concerning the regulation of Outdoor Live Entertainment and Council Motion M-20-5, specifically. Ten speakers made public comments circling around various related themes; principal among those themes was a concern that any regulation of Outdoor Live Entertainment must balance the conflicting interests of many stakeholders. Additionally, the CPC has received written public comments, all of which are posted on the CPC website and attached to this report. The section below generally categorizes and summarizes the comments made at the public hearing according to thematic groupings. The public comment summarized below includes representation from musicians, venue owners and operators, property owners, consultants, and other interested stakeholders such as the Musician's Council on Fair Wages.

1. Each neighborhood has its own needs. Small business with jazz trio, large venue hosting STR guests, etc.
2. Balance the needs of residents and tourists. More tourism in Marigny. People pushed out for tourism.
3. Music is important to business – people patronize businesses because of music
4. STR tourism has dismantled Marigny, Treme and Bywater. Definitions should be specific and not leave ambiguous for bias and agendas. Accommodate spontaneous activities like Second Lines. Green infrastructure as sound barrier: flooding and heat island effect.
5. Central City BBQ: no issues from neighbors – AirBNBs like the venue – waiting for the current study to play out – event cancelled – MU-2 District
6. Wage – Musician's Council on Fair Wages
7. Sabrina Mays. Each neighborhood has its own norms. Quality of life issues. Norms of each community must be respected and heard. Consider music through the eyes of those born and raised here.
8. Nicole Webre. Special Event Permitting – backed up – every second line and special event goes through that office. Queue too long. Capacity is maxed out – makes it difficult to get a permit. 30 days not sufficient. Proposal: Special Events Licensing, instead of a one-off permit. License would be renewed once per year, instead of on an event basis. With complaint-based quality control. Annual permit/license for Live Entertainment. Annual license tied to zoning. Unlimited number of events. Renewed annually.
9. Jeanne Nathan. Concern with amplified outdoor music in residential neighborhoods. Respect for neighborhood norms. Agrees with annual licensing. Wedding events – intrusive on quality of life.
10. Noise ordinance as separate regulatory text – CZO makes a land use distinction between amplified and unamplified devices, but does not get into the technical details – if the stakeholder meetings reveal that the noise ordinance is not functional then a recommendation can be made to initiate a separate process to revisit the noise ordinance
11. Frequent change of use for alcohol and live music as property ownership turns over. Inundation of bars on Frenchmen. Traditionally residential squares with small businesses. Creep of restaurants and bars into the Lower Quarter.

### *Green Infrastructure*

One speaker mentioned that the OLE study might be an opportunity to integrate sound control with landscape architecture to incentivize the installation of green infrastructure that could serve the purposes of noise mitigation, stormwater management and reduction of the urban heat island effect.

### *Balancing Interests*

A common theme expressed by numerous speakers concerned the balancing of interests among conflicting stakeholders such as residents, businesses, musicians, property owners and tourists; specifically, balancing residential quality of life and not displacing long-term residents with the need for businesses to host outdoor live entertainment in order to generate revenues.

Business interests testified that music is critical for businesses and tourism in New Orleans.

OLE regulations should accommodate local culture such as Second Lines and not place onerous requirements on street musicians and Second Lines.

### *Neighborhood Standards*

One speaker observed that each neighborhood has its own social norms regarding music. Quality of life issues. The norms of each community must be respected and heard. The speaker expressed a hope that the Planning Commission will consider music through the eyes of locals and not just tourists.

### *Special Event Permitting*

After observing that the Special Event Permitting queue frequently has long lines and quickly maxes out its capacity, because every Second Line and special event must be reviewed and approved by that office, Nicole Webre proposed a Special Events License category tied to zoning in lieu of one-off permits. Such a license could be renewed annually, instead of on an event basis and regulated with complaint-based quality control. Such a license would also permit either an unlimited number of events, or some specified cap on the number of permitted special events per year, instead of being issued for each special event.

### *Stakeholder Meetings*

The City Planning staff met with individuals and representatives of the following departments and organizations in conducting research and analysis.

- City Council staff
- Mayor's Office of Cultural Economy
- Central City BBQ
- Webre Consulting

- Music and Culture Coalition of New Orleans (staff)
- Safety & Permits
- New Orleans Health Department
- Law Department
- Dave Woolworth, sound expert
- Music & Culture Coalition of New Orleans (MCCNO) focus group
  - Ethan Ellestad
  - Renard Bridgewater
  - Hannah Kreiger-Benson
  - Tracy Griffin
  - Evan Christopher
  - Sam “Big Sam” Williams
  - Arsène Delay
  - Cole Williams
  - Mark Ceaser
  - Jevon Thompson
  - Beau Ross
  - Jamilah Y. Peters-Muhammad
  - Fallon Young
  - Jocelyne Ninneman
  - Russ Mercado

## **VI. BEST PRACTICE RESEARCH**

City Planning Commission staff conducted case study research on outdoor live entertainment best practices in peer cities. These peer cities included Austin, Texas; Memphis, Tennessee; Nashville, Tennessee; San Francisco, California; Detroit, Michigan; and Seattle, Washington.

### **Summary of Common Themes**

#### *Zoning Themes*

The zoning codes reviewed exhibit wide degrees of granularity and generality in the classification and definition of land uses. Detroit, Memphis and Nashville do not explicitly contemplate outdoor live entertainment as a discrete use in the manner of the New Orleans CZO. This is likely the result of the local milieu, as the degree of granularity in the use classification, in theory, will reflect the needs and unique exigencies of the local music culture and economy. For example, Detroit's colder climate may obviate the need for a discrete definition of outdoor live entertainment in the zoning ordinance due to the prevalence of more indoor activities.

While not universal, it is common practice to prescribe decibel limits, hours of operations, sound abatement plans, orientation and design of sound equipment, and to clearly delineate enforcement mechanisms and appeals processes. Many jurisdictions also tie sound regulations to the specific characteristics of a zoning district and require good neighbor policies or notification requirements when certain criteria are triggered.

#### *Non-Zoning Themes*

San Francisco, Austin and Detroit have entertainment or music commissions that are empowered with a mandate as forums for community input and/or to manage regulatory oversight and review of music-related developments. The staff found that these music-related commissions were more common in larger jurisdictions. While New Orleans is smaller than San Francisco and Austin, the diversity and complexity of the City's music economy merit emulating the best practices of much larger cities.

### **Key Take-Aways**

- A New Orleans Music Commission similar to the Austin Music Commission would provide an opportunity for music economy stakeholders to contribute to public policies and process.
- A Music Disaster Relief Fund (COVID-19, hurricanes, flooding, etc.) would help financially support the city's local music economy during times of distress and natural disaster.
- A Live Music Fund would support local musicians more generally.
- A Music Census Report to provide policymakers with data related to the local music economy so that appointed and elected officials can make data-driven decisions.

- Institutionalizing a Music Office Review would formalize transparency, accountability and expediency in the review of music-related permits and potentially make the review process more predictable for applicants seeking permits.

## AUSTIN

As a premiere music destination, Austin has at times struggled with noise complaints<sup>3</sup> and the need to balance the conflicting interests of stakeholders and residential quality of life. To effect a rapprochement of divergent interests, the City of Austin deploys a fairly sophisticated approach through land use regulations, music assistance funds, and various civic organizations and commissions.

### *Organizations*

Austin has a number of offices and commissions involved in the regulation, development and promotion of music in the city. These include the Austin Music Commission, the Music & Entertainment Division of the Office of Economic Development, and the Music Office Review.

### *Austin Music Commission*

The Austin Music Commission was chartered in 2009 to advise the Council on issues pertaining to music development. The Commission studies the local, regional and national development of the music industry and assists in the creation of programs to support the continued growth and development of the music industry in Austin. The Commission is governed by bylaws just like any planning commission. The bylaws establish the purpose and duties of the commission, as well as rules for membership, the election of officers, the procedures for conducting public meetings, and the establishment of committees and working groups. The Music Commission convenes once a month and has two dedicated staff persons in the Economic Development Department.

The Music Commission membership reflects the diversity and expertise of the Austin music community and industry. Commissioners are selected as representatives of membership-based music organizations, music-related professional services, club owners or operators, the media, and artists in the field of music. One goal of the Commission is to enable Austin's musicians to achieve national acclaim while also remaining as permanent residents of Austin. The Commission is also charged with holding public hearings on matters that affect the music community and industry in Austin and making recommendations on such matters to the City Council which can take legislative action to support the city's music economy.

The Commission also publishes an annual report and posts monthly agendas on the Commission's website. The agenda for the meeting of March 16, 2020 included a discussion of the impact of the cancellation of South by Southwest (SXSW) and a call for possible action to issue a resolution

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<sup>3</sup> <https://feldman.law/news/austin-the-live-music-capital-of-the-world-struggles-with-noise-complaints/>

requesting the City Council to create a Music Disaster Relief Fund to assist musicians and related services workers affected by the cancellation of SXSW.

After gatherings of a certain threshold were prohibited in order to preserve public health, which effectively precluded any concerts or festivals in the city, including the cancellation of South by Southwest, the Austin Music Commission issued a formal resolution<sup>4</sup> and recommendation on April 8, 2020 to the City Council and the City Manager to initiate a Music Disaster Relief Fund to assist victims with their needs not covered by any other program. The Fund is to incorporate elements of equity, diversity and inclusion and is encouraged to collaborate with private sector funds to leverage additional assistance for the music community in the wake of COVID-19.

In light of the cancellation of the Jazz and Heritage Festival, Essence Fest, Voodoo Fest and other festivals due to the COVID-19 public health crisis, the City of New Orleans might consider the creation of a Music Commission and the establishment of similar relief funds to support musical artists in times of natural disasters that disrupt the city's tourism economy and imperil the livelihoods of the city's musicians. In the formation of such a Commission, the City would be advised to judiciously consider the range and composition of the Commission's membership and the expertise, experience, and stakeholder interests each member might bring to the Commission.

*Music & Entertainment Division of the Economic Development Department*

The City of Austin has a Music & Entertainment Division housed in the Economic Development Department. This division is tasked with leading global business recruitment, urban regeneration, small business development, and cultural and musical arts efforts in the City of Austin. This Division has six staff persons with the following job titles: Division Manager, Artist & Industry Development, Economic & Business Liaison, Entertainment Services Manager, Sound Engineering Consultant, and a Nights & Weekends Specialist.

The Division also hosts City Hall Sessions in which a live music performance is scheduled for each Austin City Council session. The performing musician is the recipient of a mayoral proclamation, thereby dedicating the day of the session to the performing artist. The City Hall Sessions documents the sessions and interviews with each performing artist.

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<sup>4</sup> <http://www.austintexas.gov/edims/document.cfm?id=338410>

## *Amplified Sound Compatibility Stakeholder Engagement*

Since 2017, the Music & Entertainment Division of the City of Austin’s Economic Development Department has been collecting proposed solutions from stakeholders and staff to address amplified sound compatibility issues surrounding live music and entertainment venues, Austinites, and visitors. In support of this engagement, the City convened stakeholder meetings in late 2018 with a Listening Session at the Doris Miller Auditorium on December 5th. This public meeting included members from neighborhood associations, music venues, night life establishments, real estate industry, and hotels. An online survey was also available to stakeholders through December 14, 2018, to collect information on ongoing issues and proposed solutions.

The principal themes that emerged from the Listening Session and online survey are summarized below and reflect interest areas in previous stakeholder engagements:

1. Agent of Change: Useful as a forward-facing tool, while monitoring and enforcement is used to resolve current conflict.
2. Compliance & Enforcement: The City must improve and then provide consistent enforcement of the sound ordinance.
3. Sound Standards, Monitoring & Mitigation: Establish amplified sound standards for all venues, increase publicly accessible and real-time sound monitoring, and increase City-led mitigation testing and efforts.
4. Stakeholder Partnerships: Build on success of Red River Extended Hours Pilot Program, where venues and residents successfully worked together on agreements and self-regulation, while also considering other community-led groups to serve as problem solvers and advocates.

## *Music Census Report*

Austin’s Economic Development Department publishes a Music Census Report.<sup>5</sup> This report is a statistical and empirical assessment of Austin’s commercial music economy that is used to inform data-driven policy decisions. The Census endeavors to establish benchmarks for future assessments the tracking of progress and implementation in meeting consensus policy goals. With inputs from 4,000 survey respondents, eight focus groups and 20 interviews, the Census measures three principal categories pertaining to the City’s music economy: musicians, music industry entrepreneurs and employees, and live music venues.

The Census collects and analyzes data on music industry sector job and income trends, revenues, affordability, select music industry demographic data, and includes a comprehensive appendix with relevant data charts. The Census also reports on issues pertaining to the city’s ordinance and

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<sup>5</sup> <https://austintexas.gov/department/music-census-reports>

enforcement, as well as public communication with city departments. Without this granular level of data on Austin's large and complex musical ecosystem it is nearly impossible to make informed, data-driven policy decisions with meaningful and tangible results or to connect policies with desired outcomes.

## **Austin Music Economic Impact Report**

### *Live Music Fund & the Music Office*

Austin has also allocated resources and funds to directly support musicians through its Live Music Fund.<sup>6</sup> The Live Music Fund was established on September 19, 2019 by City Ordinance No. 20190919-149<sup>7</sup> and was based on recommendations in Austin's 2017 Visitor Task Force Final Report.<sup>8</sup>

The Austin Live Music Fund is supported by a hotel occupancy tax: 15% of the two percent hotel occupancy tax is allocated to live music that meets the requirements of the Texas Tax Code Section 351.101(a)(4).

In addition to the Live Music Fund, the City of Austin also supports local music through its Music Office. Austin has a Music Office that effectively operates as a public booking agency for Austin's local music community. In addition to other resources on its website, the Music Office hosts a user-friendly online form allowing interested parties to submit a request for local musical acts that are filtered by musical genre, budget, event schedule, location and other variables related to hiring local musicians and bands in Austin. This accessible public-facing online interface allows interested parties to quickly and efficiently contact the Music Office's staff with expertise in placing and contracting with musical acts. The Music Office also spearheads the marketing of local music to tourists and the media, and assists in booking local bands for conventions, keynote luncheons and off-site receptions.

If New Orleans were to contemplate a similar Live Music Fund for the support of the local music economy, such a program would have to comply with state law. While the Louisiana State Constitution allows for programs of social welfare for the aid of the needy, applicants for the Live Music Fund would need to satisfy means-tested eligibility criteria. A Live Music Fund could be funded by corporate sponsors or foundations and would not necessarily require public funding.

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<sup>6</sup> <https://www.speakupaustin.org/live-music-fund>

<sup>7</sup> <http://www.austintexas.gov/edims/document.cfm?id=328565>

<sup>8</sup> <http://www.austintexas.gov/edims/document.cfm?id=280026>

## **Permitting**

### *Music Office Review and Outdoor Music Venue Permits*

Austin permits outdoor live music through its Outdoor Music Venue Permit (OMV). While Austin's zoning code defines Outdoor Entertainment as a "predominantly spectator use conducted in open, partially enclosed, or screened facilities. This use includes sports arenas, racing facilities, and amusement parks," the OMV is the principal vehicle for the permitting of outdoor live entertainment. Outdoor Music Venue permits are not issued for the use of sound equipment within 100 feet of any residential use or residentially zoned property. The OMV application form collects information from the applicant on proposed amplified sound times, compliance history, neighborhood engagement and other relevant information.

The OMV is reviewed and analyzed by multiple departments which having varying discretionary powers over the permit. Chapter 9-2, Article 2, Subpart C – Review, Notification and Appeal stipulates the purview of the Music Office Review in relation to Outdoor Music Venue Permits. Within three days of receiving an application for an outdoor music venue permit, the accountable official is required to forward the application to the music office for review. After receipt of the application from the accountable official, the music office is required to conduct an appropriate level of scrutiny based on the permit type sought and its potential impacts to the surrounding community. The investigation may include on-site inspections and sound measurements, discussions with residents and businesses owners affected by the permit, and any additional research relevant to assessing the potential impacts of the outdoor music venue permit. For events conducted on city parklands, the music office shall coordinate review and investigation with the Director of the Parks and Recreation Department.

Once an investigation has been conducted, the music office prepares a Sound Impact Plan and report recommending approval or denial of the permit application and any appropriate conditions, provisos or restrictions thereunto. This report is then forwarded to the Development Services Department. The final determination will be made by DSD no later than 45 days after the submission of a complete application. If necessary to protect public health and safety, the music office can recommend additional restrictions for one or more of the following areas in excess of the baseline regulations: limits on attendance and capacity; decibel limits; and hours of operation. The music office bases its report on factors such as the suitability of the site for outdoor music based on topography and proximity to existing and future residential, commercial and civic uses; size and capacity of the site or venue covered by the permit application; sound-mitigating design features proposed in the application (building design, stage construction and orientation, buffering, and the size, location, and orientation of speakers); restrictions on the decibel levels or operating hours proposed by the applicant, if any, beyond those required by regulations; ownership and operation of decibel meters; availability of a responsible party to attend and monitor the outdoor music events; the potential for additional sound mitigation; and the history, if any, of noise complaints and violations at the site, as verified by the police department or accountable official.

The accountable official may issue a 1-year permit authorizing the use of sound equipment for outdoor music on an ongoing basis subject to the requirements of the City Code.

Austin's City Code also establishes conditions for the revocation of permits. As stated in City Code Section 9-2-65 (Revocation of Live Music Permit), the Music Office may recommend that a permit be revoked for repeatedly exceeding the allowable decibel limits, hours of permitted sound amplification, or for other violations of conditions set forth in the Sound Impact Plan. Permits expire at midnight on the first anniversary of the date the permit was issued. Renewal of the permit prior to expiration is incumbent upon the applicant. The accountable official may refuse to issue or renew an outdoor music venue permit if the permittee has been convicted of more than two permit violations under Chapter 9-2, or if the property where the sound equipment will be used has received more than two permit violations.

### *Sound Impact Plan*

Chapter 9-2, Article 2, Subpart B – Permitting and Operational Requirements stipulates requirements for the sound impact plan. A sound impact plan is required for an outdoor music venue permit. The sound impact plan includes sound-mitigating design features; prescribed decibel levels and operating hours; availability and use of decibel meters on site; contact information and hours of availability for an individual or agent responsible for sound; location for display of permit; and any other elements required by the accountable official. Submitted sound impact plans may be modified by the accountable official, but may not be modified until a notice of intent to modify has been provided to the permit holder.

### *Temporary Event Sound Permits*

Austin's City Code also allows for a Temporary Even Sound Permit classification. Temporary Event Sound Permits (24-Hour or Multi-Day) can be issued to even operators for up to four days of amplified sound. Multi-Day permits may include up to four consecutive days or four days within a single month. A maximum of four Multi-Day permits, totaling 16 days may be issued to one site or property per calendar year. Multi-Day permits may not be issued within 30 days from the last event date to a new event date. No more than one permit may be issued for the same site or property during the Spring Festival Season.

Temporary use of sound equipment outdoors is defined as the use of sound equipment on any part of a premises that is not fully enclosed by permanent, solid walls, and a roof; and four or fewer days during a 30-day period. A sound impact plan is also required for temporary sound event permits. To obtain a temporary permit, applicants are required to submit a complete application at least 30 days prior to the date of the proposed event. If an application for a temporary permit is denied, applicants can file an appeal that complies with Section 4-20-35 of the City Code. Temporary sound event permits can also be revoked by the accountable official. In lieu of a temporary permit, an applicant may also apply for a permit authorized under Outdoor Music Permits.

### *Decibel Limits*

The city code also prescribes decibel limits in Subpart A of Article 2, Division 3. The decibel limits prescribed therein are reproduced verbatim below:

Unless a more restrictive decibel limit is required by a sound impact plan, a condition in an outdoor music venue permit, or by another provision of this code, sound equipment for which a permit has been issued under Subpart B (Live Music Permits) may be operated at the following decibel levels:

(1) Up to 85 decibels between 10:00 a.m. and: (a) 10:30 p.m. on Sunday through Wednesday; (b) 11:00 p.m. on Thursday; or (c) 12:00 midnight on Friday, Saturday, or the night before New Year's Day.

(2) Up to 85 decibels at an outdoor music venue with an occupancy capacity of 600 or fewer people located in the Warehouse District or Sixth Street District, between 10:00 a.m. and 2:00 a.m.

(3) Up to 85 decibels during the spring festival season, between 10:00 a.m. and 2:00 a.m.

(4) Up to 85 decibels at an outdoor music venue located in the Red River Cultural District, between 10:00 a.m. and: (a) 10:30 p.m. on Sunday through Wednesday; (b) 12:00 midnight on Thursday; or (c) 1:00 a.m. on Friday, Saturday, or the night before New Year's Day. In addition to the requirements of Subsection (A) of this section, use of sound equipment at an outdoor music venue is: (1) limited to 70 decibels if the venue is associated with a restaurant (general) use, as prescribed under Section 25-2-808 (Restaurants and Cocktail Lounges), and the hours of operation prescribed under Subsection (A) of this section; and (2) subject to the decibel limits prescribed under Section 25-2-583 (Commercial Recreation (CR) District Regulations), if located in a commercial recreation district. (C) The decibel limits prescribed under this section must be measured with a decibel meter approved by the music office.

### *Good Neighbor Policy*

The Outdoor Music Venue permit has a condition attached to it required the permit holder to comply with the City's Good Neighbor Policy, which is similar to New Orleans' NPP. The stated purpose of the Good Neighbor Policy is to maintain the safety, quiet and cleanliness of the area surrounding an Outdoor Music Venue and to make holders of such permits accountable.

### *Notice Requirements*

Like New Orleans' NPP program for land use actions, the City of Austin has a public notification process for music permits. The owner or operator of a site for which an outdoor music venue permit has been issued is required under Article 2, Division 3, Subpart A – General Provisions to prominently post signage displaying the following information:

1. The name and address of the site or property and the type of live music permit issued
2. The name and address of the owner or operator of the site or property
3. The decibel limits for operation of sound equipment at the site or property
4. The hours during which sound equipment may be used at the site or property
5. The date on which the permit for the site or property expires
6. If applicable, a mobile response code that links to the sound impact plan or temporary event impact plan required in connection with the amplified sound permit

## **MEMPHIS**

Like New Orleans, Memphis, Tennessee, also known as the Home of the Blues and the Birthplace of Rock n' Roll, has a rich music history. However, Memphis has a smaller population, hosting fewer festivals than New Orleans, and the city's regulatory regime reflects that difference. Secondly, whereas music venues are diffused throughout New Orleans' neighborhoods, Memphis' music economy is primarily concentrated on Beale Street in the Beale Street Historic District. The Downtown Memphis Commission manages outdoor music in the Central Business Improvement District (CBID), including on Beale Street. The Downtown Memphis Commission acts as an official partnership between local government and the downtown business community (the Downtown Development District is the local equivalent in New Orleans). Despite Memphis' music history and its contribution to the local economy, the Shelby County Development Code's regulations regarding outdoor live entertainment and comparable uses are not particularly compelling or innovative.

In general, New Orleans' Comprehensive Zoning Ordinance is more granular than the zoning ordinances of many peer cities. For example, Memphis' UDC incorporates uses as diverse as gas stations, veterinary clinics, animal hospitals, personal care services, farmers markets, salons, art galleries, vehicle parts sales and other uses under a single rubric called "Retail Sales & Services," whereas the New Orleans CZO generally disaggregates many of these uses with independent use standards. Apropos of the present study, Memphis does not treat outdoor live entertainment as a separate use, but includes two related uses: Indoor Recreation and Outdoor Recreation. Indoor Recreation includes bars, taverns, cocktail lounges and nightclubs. The use tables below summarize the characteristics of Indoor Recreation and Outdoor Recreation as they are codified in Memphis.

**Table X. Outdoor Recreation – Shelby County UDC**

**D. Outdoor Recreation**

Generally commercial uses, varying in size, providing daily or regularly scheduled recreation-oriented activities. Such activities may take place wholly outdoors or within a number of outdoor structures.

Principal Uses	Accessory Uses
Drive-in theater Campground, travel trailer park, recreational vehicle park Executive par three golf course Extreme sports such as paintball, BMX facility or skateboarding facility Golf course, country club, clubhouse Outdoor entertainment activity such as batting cage, golf driving range, mini-amusement park, miniature golf facility, water park Horse stable, riding academy, equestrian center Outdoor shooting range Sports academy for active recreational or competitive sports Stadium or arena, commercial amphitheater	Associated office Caretaker or security person housing Classroom Clubhouse Concession Food preparation or dining area Gardening Jogging, hiking, fitness and other types of trails Limited retail sales (internal) Maintenance facility Off-street parking On-site day care where children are cared for while parents or guardians are occupied on the premises Pro shop or sales of goods related to the on-site activities of the specific use Solar (photovoltaic) panels Building-mounted wind energy system Electric vehicle charging unit

**Table X. Indoor Recreation – Shelby County UDC**

**2.9.4 Commercial Use Categories**

**A. Indoor Recreation**

Generally commercial uses, varying in size, providing daily or regularly scheduled recreation-oriented activities in an indoor setting.

Principal Uses	Accessory Uses
Adult-oriented establishment Athletic, tennis, swim or health club Banquet hall Bar, tavern, cocktail lounge, nightclub Convention center Gymnastic facility, indoor sports academy Lodge, membership club Indoor entertainment activity such as pool hall, bowling alley, game arcade Indoor shooting range Movie or other theater	Associated office Concession Food preparation or dining area Gardening Off-street parking Pro shop or sales of goods related to the on-site activities of the specific use Solar (photovoltaic) panels Building-mounted wind energy system Electric vehicle charging unit

In addition to the abovementioned Indoor and Outdoor Recreation uses, Memphis also has a nightclub use. The Shelby County Unified Development Code defines “nightclub” as “a place of entertainment typically open at night, generally providing music, space for dancing, or similar entertainment and where alcoholic beverages and minor food-stuffs may be sold for on-premises consumption contingent upon the establishment possessing a current and valid license permitting such sales.”

The Shelby County UDC’s use standards for nightclubs are reproduced verbatim below.

**B. Bar, Tavern, Cocktail Lounge, Nightclub**

1. If located within the city limits of the City of Memphis then any bar, tavern, cocktail lounge or nightclub shall meet all requirements of Title 7, Alcoholic Beverages, of the City of Memphis Code of Ordinances.
2. If located within unincorporated Shelby County then any bar, tavern, cocktail lounge or nightclub shall be regulated in accordance with the requirements of Title 57 of the Tennessee Code Annotated. The use shall be located at least 500 feet from any single family residential district as measured from property line of the bar, tavern, cocktail lounge, or nightclub to the nearest boundary line of the single family residential district.

*Memphis Permitting*

Special events in Memphis are processed through the city’s Permits Office, which reviews and permits Special Events and Temporary Permits. Section 7-8-21 of the Memphis Municipal Code delineates the requirements for permitting special events.

A beer permit for a *special event* may be issued for a specific location for a period not to exceed 30 days, upon the following conditions:

- A. Application is made stating the dates and time permit will be used during the 30-day period;
- B. Application is made setting out the purpose upon forms supplied by the secretary of the alcohol commission, the application to be approved at any regular or *special* meeting of the alcohol commission;
- C. Approval is received from the city and county health department, the city building department, the city fire department, the police services division, the board of supervisors of public solicitation of funds, and/or any other affected governmental agencies;
- D. Exemption has been granted by the city council of the conditions as set forth in [section 12-84-20](#) of this Code;
- E. The required business or other necessary licenses and permits have been issued for the *event*.

Sec. 12-52-4. - Permit requirements.

A. A person seeking a permit shall file an application with the permit office on forms provided by such officer and the application shall be signed by the applicant under oath.

B. The application deadline for permits are as follows:

1. An application for a "*special event* permit" shall be filed with the permit office at least 90 calendar days and not more than 180 days before the parade or race is proposed to commence.

2. An applicant for a "public assembly permit" shall be filed with the permit office at least 14 business days before public assembly is proposed to commence.

3. The permit office, in consultation with the director of police, may waive the minimum filing period and accept an application filed within a shorter period if, after due consideration of the date, time, place and nature of the *event* the anticipated number of participants, and the city services required in connection with the *event*, he or she determines that the waiver will not present a hazard to public safety, health, and/or welfare.

C. The application for a permit shall set forth the following information:

1. The name, address and telephone number of the person seeking to conduct such *event*;

2. The names, addresses and telephone numbers of the headquarters of the organization for which the *event* is to be conducted, if any, and the names of the authorized and responsible heads of the organization;

3. The requested date of the *event*;

4. Any route to be traveled, including the starting point and the termination point;

5. If applicable, a statement that a pre-approved route will be used for the *special event* or race;

6. The approximate number of persons who, and animals and vehicles which, will constitute such *event* and the type of animals and description of the vehicles;

7. The hours when such *event* will start and terminate;

8. A statement as to whether the *event* will occupy all or only a portion of the width of the streets proposed to be traversed;
9. The location by street of any assembly areas for such *event*;
10. The time at which units of the *event* will begin to assemble at any such area;
11. The intervals of space to be maintained between units of such *event*;
12. If the *event* is designed to be held by, or on behalf of, any person other than the applicant, the applicant for such permit shall file an oath from that person with the permit office authorizing the applicant to apply for a permit on his or her behalf;
13. The type of *event* including a description of activities planned during the *event*;
14. A description of any recording equipment, sound amplification equipment, banners, signs or other attention-getting devices to be used in connection with the *event*;
15. The approximate number of participants (spectators are by definition not participants);
16. The approximate number of spectators;
17. A designation of any public facilities or equipment to be utilized;
18. If applicant is not a resident of Shelby County, the applicant shall place a surety bond and deposit equal to 50 percent of the total cost as deemed applicable by the director of police;
19. For a *special events* permit, the applicant's plan and method of notification to any neighboring residential and commercial parties affected by a race or parade for approval by the permit office; and
20. Any additional information that either the permit office or director of police finds reasonably necessary to make a fair determination as to whether a permit should be issued.

D. Pre-approved routes.

1. The permit office shall submit a list of all pre-approved routes for races and parades to the city council during the second meeting in November for consideration.

2. The city council shall approve the pre-approved routes by resolution at the next regular meeting.

3. These pre-approved routes shall be constructed to minimize the use of motorized vehicular rights-of-way, particularly at highly trafficked times of day, residential streets without sidewalks, and to maximize the use of pedestrian rights-of-way.

Sec. 12-52-8. - Standards for issuance.

A. The permit office shall consider the following factors prior to issuing a permit upon consideration of the application and other information as may be obtained:

1. The conduct of the *event* will not substantially interrupt the safe and orderly movement of other pedestrian or vehicular traffic contiguous to its route or location;

2. The conduct of the *event* will not require the diversion of so great a number of city police officers to properly police the line of movement and the areas contiguous thereto as to prevent normal police protection of the city;

3. The concentration of persons, animals, and vehicles at assembly points of *event* will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to such public assembly areas;

4. The conduct of the *event* is not reasonably likely to cause injury to persons or property;

5. The *event* is scheduled to move from its point of origin to its point of termination expeditiously and without unreasonable delays in route;

6. Adequate sanitation and other required health facilities are or will be made available in or adjacent to any *event* areas;

7. The applicant has secured the police protection, if any required;

8. Such *event* is not for the primary purpose of advertising any product, goods or *event* that is primarily for private profit and the parade itself is not primarily for profit. The prohibition against advertising any product, goods or *event* shall not apply to signs identifying organizations or sponsors furnishing or sponsoring exhibits or structures used in the parade;

9. No *event* permit application for the same time and location is already granted or has been received and will be granted;

10. No *event* permit application for the same time but not location is already granted or has been received and will be granted, and the police resources required for that prior *event* are so great that in combination with the subsequent proposed application, the resulting deployment of police services would have an immediate and adverse effect upon the welfare and safety of persons and

property;

11. No *event* is scheduled elsewhere in the city where the police resources required for that *event* are so great that the deployment of police services for the proposed *event* would have an immediate and adverse effect upon the welfare and safety of persons and property;

12. For a "*special events permit*", the applicant has submitted a sworn oath confirming the notification of the date, time and location of *event* to any neighboring residential and commercial parties affected by the *event* as approved by the permit office at least 60 days prior to *event* of any requested route not previously approved pursuant to subsection [12-52-4\(D\)](#);

13. The applicant has agreed in writing to defend, hold harmless and indemnify the city for any and all claims, lawsuits or liability including attorneys' fees and costs allegedly arising out of loss, damage or injury to person or person's property occurring during the course of or pertaining to the *event* caused by the conduct of employees or agents of the applicant.

14. The director of police has issued written approval for the police protection for *event*;

15. The applicant meets all of the requirements of this section.

B. No *special event permit* that is utilizing a route other than a pre-approved route shall be granted when the *event* will require the partial or complete closure of a public street, sidewalk, or right-of-way or diversion of the normal flow of vehicular or pedestrian traffic with structures unless either no opposition has been forthcoming from the affected public or, in the case of opposition, advance approval for is obtained from the city council:

1. Any neighboring residential or commercial party may file written opposition to an application for a *special event permit*. Written opposition must be received by the permit office at least 45 days prior to the commencement of the *event*.

2. The permit office shall immediately notify council administrator and council records of the written opposition so that an item might be added to the next scheduled city council agenda, or in the case that the agenda has already been published, to the immediately following city council agenda.

3. Permit cases shall be heard before the council in both the public safety committee and shall be before the full council on the same day, unless the permit applicant agrees to a delay.

4. Permit cases shall require a simple majority of members present for approval.

5. Upon the council approving, denying, or amending a permit request, the permit office shall approve or deny the permit application within five business days, still subject to the conditions laid out above.

Sec. 12-52-9. - Modification or denial.

A. The permit office shall act promptly upon a timely filed application for all permits.

1. For all *special event* permits, the permit office will notify the applicant of denial or modification at least 30 days prior to the commencement of the *event*, or within three days of any decision by city council under [section 12-52-8\(B\)](#), if applicable.

2. For all public assembly permits, the permit office will notify the applicant of denial or modification at least five days prior to the commencement of the *event*.

B. The permits office in consultation with administration officials may modify the conduct of the *event* at a date, time, location or route different from that named by the applicant in a manner that protects the lives, safety, health, welfare and property of the general public.

C. Upon receipt of written notice, and applicant desiring to accept the modifications must file a written notice of acceptance with the permit office within three business days.

D. The permit office shall issue in writing a denial and reasons thereof to the applicant.

Sec. 12-52-10. - Appeal procedure.

A. Any applicant shall have the right to appeal the permit office's denial of an *event* permit to the city council. The denied applicant shall make the appeal within five calendar days after receipt of the denial by filing a written notice with the permit office and a copy of the notice with the city comptroller.

B. In the *event* that the city council rejects an applicant's appeal, or in the rare *event* that an eligible council meeting does not fall within the time between the denial and the proposed *event*, the applicant may file an immediate request for review with a court of competent jurisdiction.

## **NASHVILLE**

The music industry forms the backbone of Nashville's cultural economy. Despite this hub of recording studios, booking agencies, music publishing companies, and more, the regulations surrounding live entertainment—particularly *outdoor* live entertainment—are not particularly notable.

### ***Zoning Code***

Nashville's Zoning Code is largely silent when it comes to outdoor live entertainment. However, the Code does contemplate the use "small outdoor music event," defined as: "the provision of live acoustic music using small portable sound systems outside of permanent structures on commercially-zoned property where the performers are located within one thousand feet of any

residentially-zoned property.”<sup>9</sup> This use, which falls under the broader “recreation and entertainment uses” category, is permitted, subject to specific conditions, in eight (8) commercially-zoned districts: CS Commercial Service, CS-NS Commercial Service No STRP, CS-A Commercial Service Alternative, CS-A-NS Commercial Service Alternative No STRP, CA Commercial Attraction, CA-NS Commercial Attraction No STRP, CF Commercial Core Frame, and CF-NS Commercial Core Frame No STRP.<sup>10</sup>

These conditions, or use standards, include regulations for orienting stages and sound equipment (specifically that it shall not be oriented toward any residence located within three hundred feet of the property line), maximum decibel level at the boundary line of the nearest residential property, a limit of one event per month with a maximum of eight (8) per calendar year, hours of operation (11:00 a.m. and 9:00 p.m. on weekdays, and between 11:00 a.m. and 10:00 p.m. on weekends) and a maximum duration of four hours, maximum attendance size, non-residential street access, submittal of a traffic and parking management plan, directing lighting and glare away from adjacent properties, and event notification (written notice of every small outdoor music event to all properties located within six hundred feet at least ten business days prior to the date of each event). In addition, only one small outdoor music event is permitted per block face or within five hundred feet.

#### **Small Outdoor Music Event Land Use Development Standards<sup>11</sup>**

<b>Setback.</b>	The stage and sound amplification equipment shall not be oriented toward any residence located within three hundred feet of the property line upon which the small outdoor music event is to be held. Further, sound amplification equipment shall be oriented so that sound is directed away from the closest residential property. For purposes of this subsection, "sound amplification equipment" means small portable sound systems of maximum three hundred watts, microphones, and amplified acoustic musical instruments.
<b>Noise</b>	A maximum noise level of seventy-five decibels on the A-weighted scale shall be permitted to occur at the boundary line of the nearest residential property.
<b>Limitations on Number of Events and Hours of Operation.</b>	No more than one small outdoor music event shall be held on the property in a calendar month, with a maximum of eight events per calendar year. All small outdoor music event activity shall take place only between the hours of 11:00 a.m. and 9:00 p.m. on weekdays, and between 11:00 a.m. and 10:00 p.m. on weekends and shall last a maximum of four hours. The applicant shall provide the zoning administrator with a list of the date(s) and time(s) of the scheduled small outdoor music event(s) prior to obtaining a permit. The permit holder shall annually update the information on file with the zoning administrator regarding the event date(s) and time(s), and the zoning administrator shall be notified of any change in the date(s) and time(s) of events at least ten days prior to the event.

<sup>9</sup> Nashville Zoning Code sec. 17.04.060 - Definitions of general terms

<sup>10</sup> STRP refers to Short Term Rental Property

<sup>11</sup> Nashville Zoning Code Chapter 17.16.120 - Land Use Development Standards (Recreation and entertainment uses)

<b>Attendance.</b>	Small outdoor music events shall be limited to a maximum of one hundred fifty people if the lot size is less than twenty thousand square feet in size.
<b>Parking.</b>	Adequate off-street parking shall be provided.
<b>Street Standard.</b>	At a minimum, primary street access for the event shall be from a nonresidential collector street.
<b>Traffic and Parking Management Plan.</b>	A traffic and parking management plan shall be submitted at the time the application for the use permit is filed. At a minimum, such traffic and parking management plan shall include the number of vehicles expected, a list of the streets to be used for ingress and egress, and a list of surface parking areas to be used to accommodate the event.
<b>Lighting.</b>	All light and glare shall be directed on-site to ensure surrounding properties are not adversely impacted by increases in direct or indirect ambient lighting levels.
<b>Event Notification.</b>	The applicant shall provide written notice of every small outdoor music event to all properties located within six hundred feet of the subject property at least ten business days prior to the date of each event. Such notice can be via first class U.S. mail or hand delivery. An event notification plan shall be submitted by the applicant prior to obtaining a permit identifying the method by which notice regarding the small outdoor music event(s) is to be provided. Such notice shall include the following: <ul style="list-style-type: none"> <li>a. The date, location, and hours of the event;</li> <li>b. The name, email address, and telephone number of the person(s) responsible for the event;</li> <li>c. The telephone number of the zoning administrator's office for purposes of making complaints regarding the event; and</li> <li>d. A statement that noise complaints during the event shall be made to the metropolitan police department.</li> </ul>
<b>Revocation of Permit.</b>	The zoning administrator shall have the authority to revoke a small outdoor music event permit upon the violation of any of the terms and conditions of the use permit or of the provisions of this section. Prior to taking action to revoke a small outdoor music event permit, the zoning administrator shall have received a petition documenting the violation(s) signed by owners/occupants representing a majority (fifty percent plus one) of the properties within the event notification area and a copy of the matter of record report from the metropolitan police department, provided that no petition shall be required whenever the zoning administrator determines that there has been a repeat violation of this section or has grounds to believe that a repeat violation has occurred within the past twelve months. Upon revocation, applicants shall not be permitted to apply for another small outdoor music event permit for a period of one year. Revocations may be appealed to the board of zoning appeals pursuant to Section 17.40.180 of the Metropolitan Code.
<b>Spacing.</b>	Only one small outdoor music event permit shall be issued per street block face. Where a block face is over five hundred feet in length, no small outdoor music event shall be permitted within five hundred feet of another property having a valid permit for small outdoor music events, measured in a direct line along the block face from property line to property line and including any public right-of-way.
<b>Contemplated Districts and Exemptions.</b>	The conditions set forth herein shall not apply to any event on public property meeting the definition of small outdoor music event, nor shall they apply to such events on property that is not zoned CS, CS-NS, CS-A, CS-A-NS, CF, CF-NS, CA, CA-NS.

For comparison to New Orleans, the small outdoor music event functions somewhere in between a temporary use that requires a special event permit (in that it is limited to one (1) event per month and eight (8) events per calendar year and that the permit can be revoked should the use violate the listed use standards) and a permitted use (an annual list of events is submitted to the zoning administrator).

In addition to small outdoor music event, the Zoning Code includes a number of other entertainment and recreation uses: after hours establishment, commercial amusement (indoor), commercial amusement (outside)--which does not include a stadium--theatre and theater, and temporary festival. In line with New Orleans Comprehensive Zoning Ordinance (which permits live entertainment as a secondary use in standard restaurants, specialty restaurants, indoor amusement facilities, bars, and breweries), Nashville's zoning code also includes comparable uses including microbrewery, nano brewery, bar or nightclub, and restaurant, full-service. Of the listed uses subject to specific conditions, none make reference to live entertainment, and none outright prohibit them from providing live entertainment outdoors. However, as described in a later section, the noise and amplified sound code may limit these uses in certain circumstances.

### ***Downtown Code***

A component of the city's Zoning Code, the Downtown Code focuses on Nashville's downtown area, which the plan divides into Central, North, South, and West. These regulations largely address permitted uses, sign standards, miscellaneous on-site development standards such as fences and walls, parking and access, open space, etc. Like in the full Zoning Code, regulations directed at uses that might allow for outdoor live entertainment (or live entertainment in general) are not present. Many of the aforementioned uses, including bars and nightclubs, restaurant, full-service, microbrewery, commercial amusement (outside), theater, stadium arena/convention center, and temporary festival are permitted in the downtown districts. Fairground is also a permitted use but is not defined.

The noise and amplified sound code regulates sound levels in the downtown area. This is expounded on below.

### ***Noise Ordinance***

Nashville's noise and amplified sound regulations are addressed in Title 9 of The Code of the Metropolitan Government of Nashville and Davidson County, Tennessee and dictate whether outdoor live entertainment can take place.

For all properties *except* for those zoned Downtown Code (DTC), and CF Commercial Core Frame when contiguous to those zoned DTC district, it is unlawful to “[o]perate or allow the operation of any sound amplification equipment so as to create sounds that are plainly audible from the boundary line of the nearest residentially occupied property,” and for multi-family structures, “... from any point within the interior of another residential unit in the same complex or within the

boundary line of the nearest residentially occupied property.” These prohibitions do “not apply to special events, mass gatherings, or other permitted activity by the metropolitan government or its boards or commissions...” and do “not apply to entertainment facilities constructed to provide outdoor entertainment owned by metropolitan government or its agencies and parks under the control of the board of parks and recreation.” In other words, City-owned property is exempt.<sup>12</sup>

For those properties zoned Downtown Code (DTC), and CF Commercial Core Frame when contiguous to those zoned DTC district, "any amplification device mounted to the exterior of a building or structure, or to operate such device outside of the premises" is prohibited, except for in the following scenarios:

- a. Special events, mass gatherings, or other permitted activities by the State of Tennessee or the metropolitan government or any of its boards or commissions;
- b. Entertainment facilities constructed to provide outdoor entertainment owned by the State of Tennessee, the metropolitan government (or its agencies), or the parks under the control of the State of Tennessee or the metropolitan board of parks and recreation;
- c. Churches or facilities used for religious worship.

There is a decibel limit of 85 decibels (A weighted) both for speakers oriented toward the exterior opening of a building is, as measured at street level fifty linear feet from the outside wall of the structure within which the noise is produced, and for dining establishments that provide outdoor seating, as measured at street level fifty linear feet from the property line of the dining establishment from which the noise is produced. This applies to pre-recorded music only; live music is exempt from the 85 decibel limitation per Section 9.20.010.B.3.

However, the noise ordinance also prohibits outdoor music and/or entertainment events in the downtown area that produce amplified sound more than 85 db(A), as measured from any point within the boundary line of the nearest residentially occupied property at the street level.<sup>13</sup> As such, it appears there is a conflict in the law as it relates to the prior noted live music exemption.

Outside of the downtown area (DTC) and properties zoned CF district that are contiguous to those zoned DTC, amplified music or entertainment is prohibited when within 50 feet of a residence and/or of a natural conservation area unless provided within a totally enclosed structure.

Succinctly put, outdoor live entertainment is allowable so long as it meets the noise and amplified sound regulations; however, this is extremely difficult and effectively prohibits most amplified outdoor live entertainment.

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<sup>12</sup> 9.20.010 - Sound amplification equipment.

<sup>13</sup> Section 9.20.030.B

## **SAN FRANCISCO**

### ***San Francisco Entertainment Commission Case Study***

The San Francisco Police Code defines “entertainment” as the following:

- Any act, play, review, pantomime, scene, song, dance act, song and dance act, or poetry recitation, conducted in or upon any premises to which patrons or members are admitted;
- The playing or use of any instrument capable of producing or used to produce musical or percussion sounds, including, but not limited to, reed, brass, percussion, or string-like instruments, or karaoke, or recorded music presented by a live disc jockey on the premises;
- A fashion or style show;
- The act of any female entertainer, while visible to any customer, who exposes the breast or employs any device or covering which is intended to simulate the breast, or wears any type of clothing so that the breast may be observed.<sup>14</sup>

The Police Code provides the legal mechanism for enforcement of entertainment provisions and authorizes the San Francisco Entertainment Commission to manage permits. The Entertainment Commission’s jurisdiction includes outdoor events with entertainment and/or amplified sound on City streets and sidewalks and other non-residential property, Port of San Francisco property, and Treasure Island.

### ***Zoning Requirements and Approval Process***

Any property proposing entertainment must file an application with the Entertainment Commission, which forwards it to various City departments for review and/or approval, including to the Police Department and Planning Department. A venue located in a zoning district that allows entertainment only when authorized through the conditional use process must obtain zoning approval as part of this process. All applications through the Entertainment Commission must go before the Commission at a public hearing, during which staff presents its recommendation and the Commission votes on the request. If approved, the Entertainment Commission issues a permit that is valid for the duration of the current ownership.<sup>15</sup>

Types of permits include Place of Entertainment, Limited Live Performance, and Extended Hours Premises permits, among others, which are defined in Tables X and Y, below.

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<sup>14</sup> For the purposes of this study, “adult use,” such as an “adult live performance venue” or an “adult motion picture theater,” as defined in Article 26 of the City of New Orleans Comprehensive Zoning Ordinance are uses that fall outside of the outdoor live entertainment consideration.

<sup>15</sup> Permits may be suspended or revoked pursuant to Sec. 1060.20.3 Suspension for Public Safety by the Director and Sec. 1060.20.4 Revocation of a Permit.

**Table X. Entertainment Commission Permits for Brick-and-Mortar Establishments<sup>16</sup>**

<p><b>Place of Entertainment Permit</b></p>	<p>required for all brick-and-mortar premises, including outdoor premises, to which patrons or members are admitted, and wherein Entertainment is furnished or occurs upon the premises on an <i>ongoing or permanent basis</i>. This permit allows live performances as a primary use until 2 a.m. daily, unless conditioned otherwise by the Entertainment Commission. Examples include live music venues, nightclubs, concert halls, venues with DJs, special event venues, or any other establishment that provides Entertainment on an ongoing basis.</p>
<p><b>Limited Live Performance Permit</b></p>	<p>required for live performances in establishments whose primary use is not Entertainment. This permit is required for all premises where the locale is indoors, or consists of an outdoor plaza, courtyard, or similar space, enclosed by surrounding buildings, with or without open means of public ingress and egress, with an area in which live performances are presented that is no greater than 200 square feet. Examples include a restaurant with a piano player, or a café that hosts live poetry or music.</p>
<p><b>Extended Hours Premises Permit</b></p>	<p>required for all premises to which patrons or members are admitted or which allows patrons or members to remain between 2:00 a.m. and 6:00 a.m. which serves food, beverages, or food and beverages, including but not limited to, alcoholic beverages, for consumption on the premises or wherein Entertainment is furnished or occurs upon the premises. These permits are commonly used for late-night food establishments, or Place of Entertainment premises that want to extend Entertainment past 2 a.m. on an ongoing basis if zoning allows.</p>

**Table Y. Entertainment Commission Permits for Events<sup>17</sup>**

<p><b>One Time Outdoor Entertainment Event Permit</b></p>	<p>required for an outdoor event with Entertainment – including, but not limited to, a street fair, concert, athletic event, arts festival, block party, fashion show, fundraiser or other organized event for a group of people – at a location that is not a private residence. This permit is used for an event with Entertainment occurring outdoors on a limited basis with or without amplified sound. Refer to the municipal code’s definition of Entertainment to see if your activity is considered to be “Entertainment.”</p>
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<sup>16</sup> The Entertainment Commission also issues billiard parlor permits and mechanical amusement device permits.

<sup>17</sup> The Entertainment Commission also issues billiard parlor permits and mechanical amusement device permits.

### *Conditions of Approval, Suspensions, and Revocations*

Approved permits may include conditions as authorized by the Police Code, including a security plan or time, place, and manner restrictions. Examples of conditions from issued permits include:

Place of Entertainment Permit:

Adhere to the Entertainment Commission's Good Neighbor Policy

- Monthly calendar of events to be sent to [emailaddress@domain.com](mailto:emailaddress@domain.com)
- Sound abatement approved at 100dBA/110dBC
- Permit hold shall comply with Municipal Police Code Article 15.1 Section 1060.16 including but not limited to: Hours of operation of outdoor Amplified Sound Equipment shall be no earlier than 9:00 a.m. and no later than 10:00 p.m.
- The volume of outdoor sound shall be controlled so that it will not be audible for a distance in excess of 250 feet from the property line of the business or premises or from the periphery of the attendant audience.

Limited Live Performance:

- Permit holder shall comply with the Commission-approved Security Plan.
- Adhere to the Entertainment Commission's Good Neighbor Policy.
- Sound abatement for "non-special events" allowed every day from 9am – 10pm approved at 88dBA/95dBC maximum, measured 20 feet from the nearest loud speaker. "Non-special events" performance area permitted either indoors with doors open or outdoors on the patio.
- The permit holder is allowed to host 36 "special events" per calendar year between the hours of 9am – 10pm, with performance area located either indoors with doors open or outdoors on the patio.
- Sound abatement for "special events" approved at 97dBA/105dBC maximum, measured 25 feet from live music.
- Permit holder shall email a monthly calendar of "special events" to the Entertainment Commission and SFPD Southern Station, and notify residents above the bar via written notice, one week prior to the beginning of each month.
- Hire sufficient security staff or 10B (off-duty SFPD) to facilitate events.
- Permit holder shall be responsible for the management of outside promoters, special events, and the patrons inside and on the perimeter of the venue.

The limited live performance permit is an accessory use permit which, upon issuance, allows live entertainment/performance until 10:00 p.m. However, an applicant can apply to extend it to 11:00 p.m. upon a showing of good behavior.

Additionally, permits are not valid without a current tax license. Failure to meet the required conditions or any other requirements in the law could result in either the suspension or revocation of a permit. Suspension is typically reserved for circumstances where the permittee or an employee

has committed a criminal behavior (e.g. unlawful possession of a weapon, assault and battery, etc.) at the business, on the sidewalk abutting the business, or within 100 feet of the business and had been on the premises no more than 30 minutes prior to engaging in that conduct.

The more punitive permit revocation may be triggered by a number of issues, including failure to pay a required fee, finding that the permittee presented false or fraudulent information as part of their application for a permit, and public safety considerations, defined as a substantial risk of physical harm or injury to individuals (continued unlawful behavior, e.g. assault and battery, unlawful possession of a weapon, etc.). Proposed permit revocations are considered at a public hearing of the Entertainment Commission.

#### ***Noise Limits and Outdoor Amplified Sound***<sup>4</sup>

The San Francisco Police Code sets regulations for outdoor amplified sound while the noise ordinance regulates noise limits that may apply to the aforementioned permit categories.<sup>18</sup> Noise limits for commercial properties, in general, may not exceed eight dBA above the local ambient at any point outside of the property plane. However, businesses with Place of Entertainment or Limited Live Performance permits, or other locations subject to regulation by the Entertainment Commission, dBC criteria (for low frequency) shall also apply and shall not exceed the low frequency ambient noise level by more than 8 dBC.

Regarding outdoor amplified sound, the below regulations apply:

- (1) Hours of operation of outdoor Amplified Sound Equipment shall be no earlier than 9:00 a.m. and no later than 10:00 p.m.;
- (2) Amplified speech and music shall not be unreasonably loud, raucous, or jarring to persons of normal sensitivities within the area of audibility, nor louder than permitted in subsection (c); and
- (3) The volume of outdoor sound shall be controlled so that it will not be audible for a distance in excess of 250 feet from the property line of the Business or premises or from the periphery of the attendant audience.

The Commission has the discretion to impose noise limits that are different from those listed above after consideration of the following factors:

- (1) Whether the Business, premises, or event will generate outdoor amplified sound in the evening;
- (2) In the case of an amendment to an existing permit, the length of time the Business or premises has operated, either under the current operator or prior operators;

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<sup>18</sup> Administrative Code Article 29: Regulation of Noise

- (3) In the case of an amendment to an existing permit, whether the Commission, Police Department, Department of Public Health, or other City entity has received noise complaints related to the operation of the Business or premises;
- (4) The proximity of the Business or premises to other outdoor amplified sound or commercial uses;
- (5) The proximity of the Business or premises to existing residential buildings; and/or
- (6) The proximity of the Business or premises to hospitals, schools, houses of worship, courthouses, public libraries, or mortuaries and those facilities' normal hours of use.

**Sound Testing**

The Entertainment Commission has the authority to perform sound tests or sound monitoring as part of its staff-level review. As part of the sound test, staff inspectors first measure, for one (1) minute, ambient sound levels at 250 feet to determine a baseline. The inspector then measures sound levels at 250 feet for one (1) minute while the business plays a song selected for testing purposes (e.g. loud, bass-heavy without quiet or slow parts). The inspectors measure using both on the A-Weighted and C-Weighted scales. This allows the staff to determine the appropriate maximum allowable sound level that they will recommend to the Commission.

**SOP Outdoor/Exterior Sound Limit Test**

<b>Setup (in office/car)</b>	<input type="checkbox"/> Setup SLM: View Options>>Time Weighting>>SLOW <input type="checkbox"/> Calibrate SLM: NOTE offset, less than +/-0.5 dB
<b>Ambient Measurement</b>	<input type="checkbox"/> Make 1-min recording at 250 feet from event <input type="checkbox"/> Distance is relative to nearest crowd/patron location <input type="checkbox"/> Make sure there are no entertainment sound sources during ambient <input type="checkbox"/> NOTE time of measurement, location, and ambient levels in dBA and dBC
<b>Sound System Setup</b>	<input type="checkbox"/> Talk with manager/sound engineer about loudest, bass-heavy music that will be played <input type="checkbox"/> Choose steady, bass-heavy music <input type="checkbox"/> A song that can be repeated and does not have quiet/slow parts
<b>Outdoor Special Event Measurement at 250 feet</b>	<input type="checkbox"/> Once song is agreed upon, check levels at 250 feet while playing <input type="checkbox"/> Compare to ambient in dBA and dBC <input type="checkbox"/> If levels are noticeably exceeding ambient, have them turn it down (walkie-talkies are helpful) <input type="checkbox"/> Adjust sound levels until they are not contributing to ambient sound levels at 250 feet <input type="checkbox"/> Make 1-min measurement/recording at 250 feet <input type="checkbox"/> NOTE time of measurement, location, and sound levels in dBA and dBC
<b>Outdoor/Special Event Sound Limit Measurement</b>	<input type="checkbox"/> Play same section of song at same volume <input type="checkbox"/> Measure/record at a reference location either 15 feet, 25 feet, or 50 feet from speaker (depending on size)

	<input type="checkbox"/> Make 1-min measurement/recording <input type="checkbox"/> NOTE distance from nearest loudspeaker or sound source <input type="checkbox"/> Sketch plan view/footprint of stage, speakers, etc. <input type="checkbox"/> X marks the measurement spot
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***Residential Development Compatibility***

In 2015, San Francisco passed legislation designed to ensure compatibility between residential developments and existing places of entertainment.<sup>19</sup> As part of these regulations, existing, law-abiding places of entertainment are protected from potential conflicts with nearby residences. Additionally, this law protects future residents in neighborhoods where places of entertainment operate “by providing notification processes to inform such residents of the possible noise levels in such neighborhoods and by requiring design features in new residential construction to promote the compatibility of residential uses and entertainment uses in adjacent or nearby Places of Entertainment.”

The Planning Department is charged with maintaining a list of permitted places of entertainment on its website as well as notifying applicants for proposed projects when they are located within 300 feet of an existing place of entertainment. Entertainment Commission staff are permitted to take exterior acoustical measurements of conditions at the proposed site to determine normal daytime conditions, normal nighttime conditions when no performance is taking place at any place of entertainment within 300 radial feet of the proposed project, and conditions during a performance at any place of entertainment within 300 radial feet of the proposed project.

The Entertainment Commission also considers whether a hearing is required for a proposed project. If so, representatives from places of entertainment within 300 radial feet have the opportunity to present evidence regarding noise issues and levels. The applicant for the proposed project will also have an opportunity to present evidence of the current noise levels in the area, the project’s proposed noise attenuation features and alternatives, including voluntary collaboration with the place of entertainment; the projected level of interior noise for residential units in the project; and the project sponsor's engagement or plans for engagement with the place(s) of entertainment.

Lastly, prior to the lease or sale of residential property, the transferor of the property must provide a disclosure notifying the lessee or purchaser that the property is adjacent to or nearby a place of entertainment:

**"DISCLOSURE OF NEIGHBORING PLACE OF ENTERTAINMENT.**

You are purchasing or leasing property that is adjacent or nearby to [name and address of the Place(s) of Entertainment]. This venue is an existing Place of Entertainment, as defined in Police

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<sup>19</sup> Administrative Code Chapter 116: Compatibility and Protection for Residential Uses and Places of Entertainment

Code Section 1060, which includes establishments such as live music venues, nightclubs and theaters. This establishment may subject you to inconveniences or discomfort arising from or associated with its operations, which may include, but are not limited to, nighttime noise, odors, and litter. One or more of the inconveniences or discomforts may occur even if the Place of Entertainment is operating in conformance with existing laws and regulations and locally accepted customs and standards for operations of such use. If you live near a Place of Entertainment, you should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living in a neighborhood with mixed commercial and residential uses."

### *Good Neighborhood Agreement*

Finally, the Entertainment Commission works with venues, festivals and events, and the community to mitigate adverse impacts through mediation, conditioning, and outreach. A Good Neighbor Policy is one of these tools and includes provisions such as reducing the amount of noise by closing windows and doors during entertainment (unless otherwise conditioned), providing a phone number to all interested neighbors to allow for immediate contact with a staff member, maintaining well-lit signs and walkways, maintaining all entrances and exits to the building and all sidewalks within 100 feet of the premises in a clean and sanitary condition, which includes picking up litter between 30 minutes after closing and 8:00 a.m.

## **DETROIT**

### *Historical Background*

Despite their climatic differences, Detroit and New Orleans are characterized by common heritages: river cities on lands where indigenous communities resided and subsequently founded by French colonials that developed rich, complex culture known for music that have faced disasters that continue to challenge them. With this in mind, the staff evaluated the relevant and related regulations of outdoor live entertainment in the city. They are as described in the following paragraphs.

### *Planning Strategies*

The City of Detroit first provides commercial establishments a "Commercial Building Plan Checklist" which identifies the review procedures by which departments and the required materials; the checklist does not make a specific distinction for venues with live entertainment.<sup>20</sup> Detroit's municipal codes and zoning ordinances do delineate by type of entertainment, but they mostly cover definitional and licensing standards. The City offers public entertainment licenses that can be renewed once every one or two years, particularly for circus, concert, and stage show type businesses.<sup>21</sup> Other general regulations for activities containing music are prohibited from

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<sup>20</sup> Buildings, Safety Engineering and Environmental Department, n.d. Commercial Building Plan Checklist. City of Detroit.

<sup>21</sup> City of Detroit, 2020. *Detroit City Code*. Detroit: Detroit, Article XI.

operating from 10pm to 7am<sup>22</sup> while permitting dancing activities reduces the prohibited hours to 2am to 7:30am.<sup>23</sup> Other general regulations for activities happening outdoors include permissions in certain districts without a temporary use permit, prohibiting uses in the front or side yard setbacks nor in parking or loading areas, requirements for screening of said areas, and these use areas shall not exceed ten percent of the gross floor area of the principal building.<sup>24</sup>

The City of Detroit does have explicit regulations related specifically to outdoor live entertainment regulating the approval process per zoning districts, particularly in business, industrial, and overlay districts; it must be noted that the uses are fairly specific as they include amusement park, drive-in theaters, and other outdoor recreation otherwise not specified and less so contemplating music or performance activities.<sup>25</sup> The series of regulations related to outdoor live entertainment are generally geared towards stadiums and sports arenas, but with the term “outdoor entertainment facilities” could include outdoor live entertainment. Many of these regulations govern vehicular parking lots but do have area requirements in business and Public Center Districts. The design standards for the spaces themselves do require hardscape surfacing and landscaping.<sup>26</sup> Otherwise, outdoor assembly uses including carnivals, fairs, circuses, concerts, festivals, and other public entertainments, are permitted in non-residential zoning districts for eight (8) consecutive days and for four (4) days in residential zoning districts and events over 5,000 patrons must have fencing, have a maximum duration of eighteen (18) hours, illumination standards of lighting the entire area of the assembly at the rate of at least five foot-candles, but not to shine unreasonably beyond the location’s enclosed boundary, and potable water.<sup>27</sup>

### *Entertainment Regulatory Bodies*

The City of Detroit does have the Detroit Entertainment Commission (DEC). Its purpose is to advise the Detroit City Council by providing assistance and support to the arts and entertainment community while also fostering and promoting opportunities for growth of this sector across the City. Presently, the DEC has no review or approval responsibilities for land use matters specifically related to outdoor live entertainment as these processes are largely executive branch functions and based on the type of development would also be reviewed by any combination of the following: the Police Department, Fire Department, Department of Public Works, Department of Transportation, and/or Office of Special Events as well as the City Council.<sup>28</sup>

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<sup>22</sup> City of Detroit, 2020. *Detroit City Code*. Detroit: Detroit, Chapter 16, Article I, Division B, Sec. 16-1-3.

<sup>23</sup> City of Detroit, 2020. *Detroit City Code*. Detroit: Detroit, Chapter 5, Article III, Division 1, Sec. 5-3-6.

<sup>24</sup> City of Detroit, 2020. *Detroit City Code*. Detroit: Detroit, Article XII, Division 5, Subdivision A

<sup>25</sup> City of Detroit, 2020. *Detroit City Code*. Detroit: Detroit, Article XII, Division 1, Subdivision D, Sec. 50-12-67.

<sup>26</sup> City of Detroit, 2020. *Detroit City Code*. Detroit: Detroit, Article XII, Division 3, Subdivision B, Sec. 50-12-190.

<sup>27</sup> City of Detroit, 2020. *Detroit City Code*. Detroit: Detroit, Article XII, Division 6, Subdivision B, Sec. 50-12-552.

<sup>28</sup> Todd, M., 2020. *RE: Outdoor Live Entertainment Lessons Learned For New Orleans*. [email].

## *Applicability to New Orleans*

Detroit has taken an approach to its entertainment and culture that helps business owners and culture bearers opportunities to understand the process for support and permitting. New Orleans should do similar by providing relevant definitions and guides where possible. If new regulatory structures are created, they should be designed to support cultural-bearers and business owners to not serve as an impediment or seen as inordinately punitive; these goals should be balanced to protect neighbors. New Orleans could provide further distinction of outdoor live entertainment where Detroit does not in order to make clear to the public about how lands in the City can be use in equitable, safe, and culturally relevant ways.

## **Seattle**

### *History/Overview*

Seattle and New Orleans are culturally, historically and demographically very different cities. However, Seattle has a vibrant music scene and a regulatory framework that supports outdoor live entertainment which can be used to learn about best practices. With this in mind, the staff evaluated the relevant regulations of outdoor live entertainment in the city, as described in the following paragraphs.

### *Planning Strategies*

To the extent researched, Seattle doesn't explicitly disaggregate outdoor live entertainment as a separate use in its zoning ordinance; in addition, there do not appear to be any regulations for separation distances from properties with entertainment uses nor specific outdoor live entertainment regulations. The zoning ordinance does list entertainment uses that include live entertainment, does have regulations regulating sound and noise mitigation, and the city overall has developed a structure to support entertainment enterprises and nightlife. The New Orleans CPC staff has identified the following strategies that are employed in Seattle to regulate and embrace live entertainment.

The definition most relevant to live entertainment can be found in Seattle's Land Use Code and is as follows:

<sup>29</sup> "Entertainment use" means a commercial use in which recreational, entertainment, athletic, and/or cultural opportunities are provided for the general public, either as participants or spectators ... Entertainment uses include the following uses:

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<sup>29</sup> City of Seattle, Municipal Code. (May 11, 2020). "Land Use Code." [Municode: Title 23, Subtitle IV, Chapter 23.84, Section 23.84A.010]  
<[https://library.municode.com/wa/seattle/codes/municipal\\_code?nodeId=TIT23LAUSCO\\_SUBTITLE\\_IVAD\\_CH23.84ADE\\_23.84A.010E](https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT23LAUSCO_SUBTITLE_IVAD_CH23.84ADE_23.84A.010E)> Accessed June 18, 2020.

...

6. "Theaters and spectator sports facilities" means an entertainment use in which cultural, entertainment, athletic, or other events are provided for spectators either in or out of doors. ...

Theaters and spectator sports facilities include, but are not limited to, the following uses:

- a. "Lecture and meeting hall" means a theater and spectator sports facility intended and expressly designed for public gatherings such as but not limited to commercial spaces available for rent or lease for the purpose of holding meetings or the presentation of public speeches.  
...
- c. "Performing arts theater" means a theater and spectator sports facility intended and expressly designed for the presentation of live performances of drama, dance and music.

With this in mind, the City of Seattle does provide guidance on mitigating outdoor amplified sound via their Special Events Office with their Special Events Permitting Handbook.<sup>30</sup> The guidance opens by making clear that “outdoor amplified sound at events must adhere to volume levels established in Seattle's Noise Code.”

The handbook then provides a permitting process of a Temporary Noise Variance for those events that seek to utilize outdoor amplified sound on “off-hours (between the hours of 10:00pm to 7:00am weekdays, 10:00pm to 9:00am weekends).” The variance permits further flexibility to operate events that their Noise Code limits and is reviewed by Seattle's Department of Construction and Inspection (SDCI) Noise Abatement Program. The Seattle Municipal Code authorizes the SDCI Director “to impose conditions and mitigate the adverse impacts of granting a temporary noise variance.” Third-Party Noise Monitor Authority, General Equipment Setup, and a Laptop Computer With Approved Software are all typical mitigations the Director would employ.

The City of Seattle’s Office of Film + Music also provides further guidance with a Seattle Nightlife Establishment Handbook.<sup>31</sup> As the CPC staff has broken down various strategies to ensure compatibility into categories, the corresponding strategies as listed in the aforementioned handbook are as follows:

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<sup>30</sup> City of Seattle, Special Events Office. *Special Events Permitting Handbook*, “Outdoor Amplified Sound.” <<http://www.seattle.gov/special-events-office/handbook/outdoor-amplified-sound>> Accessed June 18, 2020.

<sup>31</sup> City of Seattle, Office of Film + Music. *Nightlife Establishment Handbook*, “Outdoor Amplified Sound.” <[www.seattle.gov/filmandmusic/nightlife/nightlife-handbook#mitigatingnuisancennoise](http://www.seattle.gov/filmandmusic/nightlife/nightlife-handbook#mitigatingnuisancennoise)> Accessed June 18, 2020. [Seattle Nightlife Establishment Handbook](http://www.seattle.gov/filmandmusic/nightlife/nightlife-handbook#mitigatingnuisancennoise)

## *Noise*

The handbook first advises a property/business owner to consult with a sound engineer or acoustical expert to conduct site evaluation and provide instruction on establishing speaker placement, maximize amplification settings, and other noise mitigation options. Next, the handbook outlines an improvement to a property that is a sound level meter, which is helpful for measuring interior sound as well as exterior sound levels. This recommendation concludes by advising choosing a meter that is American National Standards Institute (ANSI) rated Type I or II.

## *Design & Mitigation Strategies*

The handbook describes numerous strategies for design and interior orientation that can help ensure compatibility for events that have outdoor amplified sound with adjacent areas. The structural recommendations include having door vestibules, double entry doors, triple-glazed windows, buffering walls and ceilings, insulating exterior walls, and air conditioning as a method of avoiding opening windows for ventilation. The operation standards comprise of keeping windows closed while the amplified sound is being played.

## *Community Involvement*

The handbook doesn't keep the business/property owner insulated to their own property, as it also encourages engaging with the community the property is in. One general strategy is reaching out to neighbors and testing their equipment with neighbors. Another strategy for is to provide signage that serve clearly visible reminders for patrons of a venue to respect your neighbors by refraining from loud conversation when outside, to avoid loitering in in the street and/or adjacent parking lots and playing loud music over their car stereos.

## *Entertainment Regulatory Bodies*

The City of Seattle doesn't have an explicit regulatory or advisory governmental body, per the CPC staff research. A resource that the City does make available to entertainment enterprises is a position dubbed the Nightlife Business Advocate, which is housed in the Office of Film + Music. The position works in tandem with Code Compliance Team to provide advisement on regulations, enforcement, and opportunities in the "two buckets of public safety and economic development."<sup>32</sup>

## *Applicability to New Orleans*

Seattle has created a regulatory environment that supports entertainment business owners and cultural-bearers in specific methods. Providing guides, encouragements for community engagement, sound engineering planning, and advocates in city government are all ways that make it clear which departments to gain permitting approval and the specific methods the City of Seattle supports entertainment and culture while balancing concerns of negative impacts. New Orleans

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<sup>32</sup> <sup>32</sup>City of Seattle, Office of Film + Music. "Nightlife." <<https://www.seattle.gov/filmandmusic/nightlife>> Accessed June 18, 2020.

has an opportunity to more explicitly show through regulations and governmental agencies to cultural-bearers and entertainment business owners that are and have historically been the heart and soul of the city how they can be supported while mitigating potentially harmful impacts through the extent possible. The need is present to be more flexible with live entertainment and providing more avenues for compliance while proposing more design, sound, and other mitigation efforts that are sensible and achievable. Seattle has demonstrated a multitude of ways to augment healthy and safe entertainment that could be integrated into the culture of New Orleans at various levels.

## **VII. RECOMMENDED AMENDMENTS TO THE COMPREHENSIVE ZONING ORDINANCE**

As the City enters 2021, the COVID-19 pandemic will continue to be a consideration for the cultural and tourism economies. It likely will take considerable time for the general population to become vaccinated and even to become comfortable with the safety and effectiveness of receiving the vaccine. Outdoor spaces will need to play an important and sometimes alternative role in the provision of outdoor live entertainment, as crowded indoor spaces may still be prohibited or discouraged.

The volume and ability for sound to travel and disturb other uses – especially residential – is the main consideration for regulating outdoor live entertainment. As described earlier, issues with the current Sound/Noise Ordinance make it an unhelpful partner in assuring peaceful cohabitation of outdoor live entertainment with its neighbors. This Study recommends a phased approach to outdoor live entertainment regulations, depending more on temporary special event permits in Phase 1 and transforming to rely more on a system of compliance and technical enforcement tools. There are also many minor changes that can be made now to CZO definitions, use standards, and district permissions recommended to expand options for outdoor live entertainment.

### **Phase 1**

#### ***Temporary Outdoor Live Entertainment Special Event Permits***

Special event permits grant the authority to provide uses on a temporary basis. Unlike permitted and conditional uses described in zoning districts' use charts, a temporary permit does not vest a right beyond the dates listed in the permit. When rights are vested, the City's regulatory enforcement can become more complicated, which in turn may lead to reluctance to grant approval, depending on the location and community support. The CPC staff recommends a significant expansion of the allowed number of temporary outdoor entertainment events, as described in Article 21 Section 21.8 of the CZO. When a modern, fair, constitutional, and enforceable sound/noise ordinance is developed, compliance with the ordinance will be a better tool than now to regulate outdoor live entertainment. Until a modern ordinance is available, the City would not be in a good position to adjudicate violations and bad actors could take advantage of vested rights.

The current regulations state that in all districts, temporary outdoor entertainment events may be authorized on public or private property a maximum of 3 consecutive days per event, with a maximum of 8 events or 24 days per calendar year. Stakeholders report that the uncertainty around when the permit will be issued leaves them in a tough position for planning and scheduling entertainers. CPC staff recommends a one-year program to increase the number of temporary events and allow 2-3 times per week. This should be available through issuance of a single permit for all days of the year when entertainment would be planned. The one-year program should help struggling musicians, entertainers, business and property owners recover from a long pandemic-related period of inactivity. Further, the one-year program would act as a pilot for subsequent

potential permanent changes, with the opportunity for businesses and neighbors to work together. It shall be important for the City to maintain and increase staffing commensurate with the level of interest in special events permitting.

In lieu of an enforceable sound/noise ordinance, hours of operation for the outdoor live entertainment would be the main regulation. The entertainment should be associated with an occupiable building and business, but it need not be associated only with restaurants, bars, breweries, etc. The expanded temporary event permit should also not be considered a license to sell alcoholic beverages, where the business does not already have that right. The following standards can be applied to the temporary permits:

- Increase the number of temporary events commercial and institutional uses may hold allowing 2-3 times per week. This should be available through issuance of a single permit for up to all days of the year when entertainment would be planned.
- To qualify for the temporary permit, uses should have a license as a commercial or institutional use, be accustomed to serving groups of people, and have permanent public restroom facilities. Extra provision of handicapped accessible temporary restrooms may be allowed.
- Tables and chairs should occupy at least 50% of the outdoor floor area (not including landscape areas.)
- Hours are limited to **12pm – 8pm, Mon-Thurs, 12pm-9pm Friday, 11am – 9pm Saturday, 11am-8pm Sunday.**
- Speakers and instruments shall be directed away from adjacent residences to the greatest extent possible.
- Require rear yard buffer equivalent to the required rear yard, or a minimum of 15 ft. whichever is greater.
- Require a noise/sound abatement plan for mitigation and complaints.
- The temporary permit shall be posted in a location visible to the public near the business entrance.
- Documentation of repeated violations may result in revocation of a temporary permit. Complaints of violations must be verified by City officials.

### ***Outdoor Amphitheaters***

Outdoor amphitheaters are extremely restricted in the number of zoning districts where such use is authorized. Currently, outdoor amphitheaters are only allowed in the OS-R Open Space Regional Park District, the OS-CBD Central Business Open Space District, and the CBD-4 Central Business Exposition District. While such a use does need to be limited, since it operates entirely outdoors and has no general limitation of hours, there are some minor amendments that could be made to relatively intense zoning districts. However, a baseline parking requirement should be established in case the use is authorized in a non-park district that generally requires parking.

Duncan Plaza across from City Hall has been identified for revitalization and the construction of an outdoor amphitheater. Text amendments creating a new OS-CBD Central Business Open Space District were approved in 2019. The text amendments will allow an outdoor amphitheater to operate 7 days per week. The Downtown Development District has developed a revitalization plan and would manage the park. This has the potential to provide for some of New Orleans' outdoor entertainment needs and may also serve to improve a less-activated part of the CBD.

Breweries such as Faubourg (formerly Dixie) have been providing a few outdoor entertainment events on a regular basis. When located in industrial areas where space can be ample, these facilities have the potential to provide outdoor entertainment without much impact to neighbors. Recommendations for outdoor amphitheaters are summarized below.

- Authorize in EC Educational Campus, LI Light Industrial, S-LM Lake Marina, C-2 General Commercial, and C-3 General Commercial Districts.
- Authorize as a permitted use in the OS-G Open Space Greenway District.
- Establish parking standards for stand-alone outdoor amphitheaters that are not located in parks.

### ***Reception Halls***

Reception Halls are permitted uses only in the more intense zoning districts throughout the city, including the S-LB2 Lake Area Business, S-LC Lake Area General Commercial, C-2 General Commercial, C-3 General Commercial, MU-1 Mixed Use Medium Intensity, MU-2 Mixed Use High Intensity, LI Light Industrial, and the CBD-1, CBD-2, CBD-3, CBD-4, CBD-6, and CBD-7 Central Business Districts. Considering the liberal hours of operation allowed in the use standards, it is understandable that reception facilities would be a conditional use in the less intense districts that are more closely knit with residential districts. However, the use standards contain a minimum distance requirement of 200 feet between any new reception facility and the nearest residential district. Since 2015, in nearly every case where a conditional use has been applied for, this 200 ft. distance has been waived, indicating that it may be an unreasonable standard for New Orleans' development pattern. The use standards also require that all events be held in a completely enclosed building and that "live entertainment is subject to a closed doors and windows policy," thereby prohibiting outdoor weddings and other affairs. The use standards further stipulate that "music of any kind is prohibited outside the building, unless approved through the conditional use process." This text is confusing when read with the "all events in an enclosed building" requirement.

Considering the relatively strict zoning district permissions for reception halls, City Planning staff believes that the use standards could be modified to allow outdoor live entertainment, although outdoor hours of operation should be specified to hours where it would be most compatible with any nearby residential uses. The 200 ft. distance between a new reception facility and the nearest residential district should be deleted and instead simply make any outdoor event area of the

reception hall use a conditional use if within 300 feet of a residential district. This would bring the reception hall outdoor live entertainment in line with the regulations of the “live entertainment – secondary use” standards. The recommended amendments concerning reception halls are summarized below.

- In the zoning districts where reception halls are permitted, change the permission to “P/C” with a footnote indicating that a reception hall’s outdoor event area is a conditional use if within 300 feet of a residential district.
- Delete the 200 ft. distance requirement between reception halls and residential districts.
- Amend the use standards to indicate that closed doors and windows requirement applies only to indoor live entertainment.
- Delete the prohibition of outdoor music/entertainment.
- Outdoor Live Entertainment Hours limited to **4pm – 8pm, Monday thru Friday; 11am – 8pm Saturday and Sunday; 11am - 9pm on Friday and Saturday.**
- Amend use standards to require a 15 ft. buffer area between the outdoor event area and a residential district.
- Require a noise/sound abatement plan for mitigation and complaints.
- Speakers and instruments shall be directed away from adjacent residences to the greatest extent possible.

### ***Outdoor Amusement Facilities***

Outdoor amusement facilities are generally restricted to the more intense zoning districts, being permitted uses in the S-LM Lake Area Marina, C-3 General Commercial, MU-2 General Commercial, CBD-4 Exposition Central Business District, and OS-R Open Space Regional Park Districts. Outdoor and indoor amusement facilities are similar in nature; however, only indoor amusement facilities may provide live entertainment – secondary use, if such use is also authorized in the subject zoning district. Both facilities include uses where live entertainment may be desired, especially if combined with restaurants and bars. For example, a miniature golf course may wish to provide outdoor live entertainment that can be enjoyed from the course or an on-site restaurant. Unlike an indoor facility where sound can be contained by walls, the outdoor facility’s sound generation should be of more concern and therefore be limited by hours of operation. Given the limited number and intensity of districts where the use is permitted, the impact of allowing ancillary outdoor live entertainment along with this use should be minimal. The CPC staff makes the following recommendations for Outdoor Amusement Facilities.

- Authorize outdoor live entertainment as an ancillary use with **Hours limited to 12pm – 8pm, Mon-Thurs, 12pm-9pm Friday, 11am – 9pm Saturday, 11am-8pm Sunday**
- The main amusement facility must remain open while any ancillary outdoor live entertainment takes place.

- Add Outdoor Amusement Facilities to the uses that are authorized to provide Live Entertainment – Secondary Use. For any hours that would exceed the “ancillary” hours above, the live entertainment would need to be authorized as Live Entertainment – Secondary Use.
- Amend use standards to require a 15 ft. buffer area between the outdoor entertainment area and a residential district.
- Require a noise/sound abatement plan for mitigation and complaints.

### *Live Entertainment – Secondary Use*

In the CZO, Live Entertainment – Secondary Use is linked to standard restaurants, specialty restaurants, indoor amusement facilities, bars, and breweries. In 2019, there was much public discussion about whether outdoor live entertainment can qualify as live entertainment – secondary use because it is not possible to close windows and doors outside, as required in use standard Section 20.3.JJ.5. This subsection seems to conflict with Section 20.3.JJ.2 which states that outdoor live entertainment areas within 30 feet of a residential district shall be a conditional use. The Safety & Permits Department Director did not issue a formal written interpretation, but in comments made to The Lens stated that the way the ordinance reads, outdoor live entertainment is “prohibited everywhere except the French Quarter through a conditional use process.” He further stated that the Department is bound by a section of the CZO requiring that the director of the department choose the most restrictive option whenever there is “implied or apparent conflict in the law.”<sup>33</sup> City Planning staff has identified concerns with the interpretation that the closed windows and doors requirement can completely prohibit outdoor live entertainment because that requirement is part of the use standards and not the definition. A use standard can be waived as part of a conditional use or variance, while a definition cannot be waived. Regardless, the CPC staff believes the use standards must be clarified.

As mentioned by the Safety & Permits Director in the above quote, Section 20.3.JJ.5 also states “[i]n the Vieux Carre Districts, music of any kind is prohibited outside the building, unless authorized through the conditional use process.” Since this sentence is in the same subsection as the closed windows and doors requirement, it was interpreted as being the only exception to the requirement. City Planning staff believes that the intention of the Vieux Carre sentence was actually to require a conditional use for either live or recorded outdoor music, though this is unclear. This subsection needs to be broken into separate numbers for clarification.

The Section 20.3.JJ.2 use standard requiring conditional use approval when an outdoor live entertainment area is within 30 feet of a residential district should also be rewritten. It is confusing to have a conditional use requirement show up in a use standard rather than the use chart of individual zoning districts. The 30 ft. distance was originally included as part of the new CZO adopted in 2015. However, the live entertainment – secondary use is still rather limited in the

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<sup>33</sup> Stein, Michael Isaac. The Lens NOLA, August 16, 2019.

districts where it is a permitted use: the VCE, VCE-1, C-2, MU-2, CBD-1, CBD-2, CBD-3, CBD-4, and CBD-7 Districts. In 4 of those districts, there is also a footnote that makes the use conditional if provided as part of a brewery. The use charts should be more clear about whether the use is permitted or conditional and not depend upon a review of the use standards to know the permissibility.

The 30 ft. distance does not seem commensurate with the great numbers of restaurants, bars, and breweries in the city and the potential for sound conflicts with residential areas. Ideally, the noise/sound ordinance should be the primary enforcement tool for live entertainment. Until the noise/sound ordinance is revised and corrects the concerns about the current ordinance, CPC staff recommends a more conservative approach to authorizing permanent entitlements by increasing the distance from residential districts that triggers conditional use application. Additionally, some guidance should be provided in the use standards for hours of operation, considering that there are residential uses even in some of the most intense zoning districts, such as the Central Business Districts. In the interim, the City can pilot test hours of operation through the relaxed special event permits as described earlier.

The CZO's definition of live entertainment – secondary use includes descriptions of certain live performances that are considered to be unregulated. These include “any such activity performed for the practice or personal enjoyment of residents of a dwelling and their guests.” It also includes periodic entertainment at various facilities like places of worship or at “religious events.” This should be amended to include “spiritual events” as well as “incidental” outdoor live entertainment such as when a brass band and second line may stop for one number on private property along its route. The CPC staff makes the following recommendations for Live Entertainment – Secondary Use:

- Establish hours for outdoor Live Entertainment – Secondary Use that are **limited to 12pm – 8pm, Mon-Thurs, 12pm-9pm Friday, 11am – 9pm Saturday, and 11am-8pm Sunday.**
- Limit the number of outdoor live performances to 2-3 times per week.
- Clarify in the use standards that the closed doors and windows requirement applies only to indoor live entertainment – secondary use.
- Add Outdoor Amusement Facilities to the uses that are authorized to provide Live Entertainment – Secondary Use.
- Delete the sentence “outdoor live entertainment areas located within thirty (30) feet of a residential district shall be a conditional use.”
- In the zoning districts where live entertainment – secondary use is a permitted use, modify to P/C with a footnote stating that “outdoor live entertainment areas located within 300 feet of a residential district or residential use shall be a conditional use.”
- Amend use standards to require a 15 ft. buffer area between the outdoor event area and a residential district.

- Clarify the regulation for Vieux Carre districts, which states “music of any kind is prohibited outside the building, unless approved through the conditional use process.”
- Make the use P/C in the C-3 General Commercial and LI Light Industrial Districts.
- Allow live entertainment – secondary use in distilleries and wineries.
- Outdoor space counts towards floor area, which is still limited by the base zoning district.
- A sound/noise abatement plan is already required.

### ***Public Markets***

Public markets, which are assemblies of vendors in open-air settings – like the French Market, have recently been given permission to have outdoor live entertainment by right. The regulations of Live Entertainment – Secondary Use were amended so they do not apply to outdoor live entertainment during a public market’s hours of operation; therefore, the musical accompaniment is permitted as an ancillary use to the public market in the same way that restaurants are permitted to provide live entertainment.

New Orleanians love outdoor festivals, as evidenced by their popularity throughout the year. Public markets offer the opportunity to replicate many of the qualities of festivals – multiple vendors, live entertainment, and open-air setting, while providing much of the infrastructure that be used repeatedly, such as booths, restrooms, fencing, shade devices, and a stage. Unlike many of the other use types discussed in this report, public markets are widely permitted in park, business, and commercial districts, including the OS-R Open Space Regional Park, OS-CBD Open Space Central Business District Park, OS-G Open Space Greenway, VCC-2 Vieux Carre Commercial, VCS Vieux Carre Service, VCS-1 Vieux Carre Service, HMC-1 Historic Marigny/Treme/Bywater Commercial, HMC-2 Historic Marigny/Treme/Bywater Commercial, HM-MU Historic Marigny/Treme/Bywater Mixed Use, HU-B1 Neighborhood Business, HU-MU Neighborhood Mixed Use, S-B2 Pedestrian Oriented Corridor Business, S-LB1 Lake Area Neighborhood Business, S-LB2 Lake Area Neighborhood Business, S-LC Lake Area General Commercial, S-MU Neighborhood Mixed Use, S-LM Lake Area Marina, C-1, C-2, C-3 General Commercial, MU-1 Mixed Use Medium Intensity, and MU-2 Mixed Use High Intensity Districts. It should be noted that floor area limitations of the zoning districts still apply to open-air uses, which would ensure size compatibility of in the lower intensity districts. Hours of operation are 7am to 8pm. Public markets are perhaps a somewhat overlooked opportunity to provide outdoor live entertainment. City Planning staff has a few use standards recommendations for compatibility and to help assure that the market is the main use when live entertainment is added to the mix:

- Booths, their circulation areas, permanent structures, and setbacks from property lines shall constitute at least 50% of the site area.
- A sound/noise abatement plan shall be provided for mitigation and complaints.
- Require a 15 ft. buffer area between the outdoor live entertainment area and a residential district.

## *Cultural Facilities*

Due to allowances in residential, commercial, and park zoning districts, cultural facilities are unique among the uses where outdoor live entertainment may frequently occur. Cultural facilities provide great opportunities for the adaptive re-use of historic structures in residential neighborhoods, such as former schools, places of worship, and firehouses. The mission of a museum may often need to be supported through events held on-site; however, location in a residential district can potentially create impacts. Fortunately, cultural facilities seem to usually be compatible and provide bona-fide cultural services that are appreciated by the neighborhood.

The definition of cultural facilities allows for the periodic use of the site for receptions and special events. No specific permission is given for live entertainment that may be part of the events. Hours of operation are only limited in residential districts: 8am to 10pm on Mondays through Thursdays; 8am to 12 Midnight on Friday through Sunday. However, the definition of cultural facility states that special events may take place beyond the regular hours of operation. Generally, cultural facilities are conditional uses in residential districts, so there is an opportunity to engage the neighborhood and address any concerns prior to approval. City Planning staff believes it advisable to clarify and give some guidance on the permissibility of both indoor and outdoor live entertainment as well as hours of operation for outdoor special events when the cultural facility is located. Recognizing the importance of supporting cultural services in New Orleans, the staff believes live entertainment should be allowed and that outdoor live entertainment should also be allowed by right when adhering to standard hours of operation and when located in a non-residential district. The CPC staff makes the following recommendations for Cultural Facilities:

- Clarify in the use standards that outdoor special events or receptions in residential districts shall not extend beyond the existing hours of operation, which are: 8am to 10pm on Mondays through Thursdays; 8am to 12 Midnight on Friday through Sunday.
- Outdoor live entertainment hours of operation should be permitted in non-residential districts, limited to **12pm – 8pm, Mon-Thurs, 12pm-9pm Friday, 11am – 9pm Saturday, and 11am-8pm Sunday.**
- Limit the number of outdoor special events or receptions to 2-3 occasions per week.

## *Arts & Cultural Overlay Districts*

Arts & Cultural (AC) Overlay Districts are areas where zoning regulations have been added to the base zoning districts to make live entertainment and other uses more permissive. In each area, there has already been community buy-in for the more permissive regulations as the overlay districts were initiated through requests of the community members. In many of the AC Overlays, this means that bars or restaurants are allowed to provide Live Entertainment – Secondary Use by

right. In others, the Live Entertainment – Secondary Use may be a conditional use where it otherwise would be prohibited. The existence of the AC Overlays offers the opportunity to tailor additional outdoor live entertainment permissions and regulations that would apply only in that area. Each AC overlay can be amended according to the community culture and support. This could mean allowing longer hours of operation or size for outdoor spaces. Or, the AC Overlays could be areas where more permissive outdoor live entertainment regulations are piloted before applying them to base zoning districts. The following are recommendations or considerations for Arts & Cultural Overlay Districts

- For businesses within an Arts & Cultural Overlay, the hours allowed for outdoor live entertainment may be longer, such as **12pm to 10pm Monday thru Friday and 11am to 10pm Saturday and Sunday.**
- Hours may be adopted to the overlays on a case-by-case basis, since regulations already vary.
- Number of times live entertainment is permitted per week may be more frequent than sites not within AC Overlays.

### *Hotels*

Along with providing accommodations for guests, hotels can be destinations for bars, restaurants, conference rooms, and ballrooms. Generally, there is an inherent compatibility between those ancillary uses and the guest accommodations that is assured by self-interests of the hotel itself. Usually, live entertainment occurs indoors and is associated with a hotel bar, restaurant, conference room or ballroom. There may be limited hotel operations that provide outdoor live entertainment not directly connected to one of these ancillary uses; these should also be considered ancillary and staff expects that the hotel would self-regulate lobby, pool area, and courtyard live performances

### **Phase 2**

#### *Provide Support for Revision of the Noise/Sound Ordinance*

A fair and enforceable noise/sound ordinance is very important for the long-term compatibility of live entertainment and other uses. Due to the ordinance’s shortcomings, enforcement of it will be rare until it is revised and updated. Although the Health Department plans to tackle this project, the proposed revision of the noise ordinance will likely be delayed due to the COVID-19 pandemic. Public participation in the revision process is an important component. Problems with the ordinance include the “plainly audible standard” in Chapter 66, which is not objective and thus difficult to enforce: what is plainly audible to one person may not be to another based on idiosyncrasies of hearing capacities.

The revision process should specifically consider sound levels for outdoor live entertainment during the limited hours of operation recommended by this study for different uses. The levels

could allow sound that may be heard by residences in the vicinity, but not so loud as to be bothersome if contained within those hours.

The city's sound ordinance must also be judicious and circumspect about the sociocultural implications of sound measurement. It should account for both A-weighting and C-weighting scales. The noise/sound ordinance also must clearly delineate enforcement protocols and mechanisms. Enforcement personnel must have the tools to evaluate sound levels and withstand legal challenges.

### ***Live Entertainment – Secondary Use***

Upon the adoption of a new noise/sound ordinance, the City would be in a good position to re-evaluate permanent entitlements that may be approved as live entertainment – secondary use. First, if restaurants, bars, breweries, and outdoor amusement facilities have participated in providing outdoor live entertainment through the relaxed special event permitting process, they may be evaluated on their compliance with hours of operation and other standards. Second, the City could use the sound ordinance for enforcement and decrease the distance requirement or allow outdoor live entertainment by right during the hours of operation. Then, the City may allow longer hours of operation if it knows sound levels can be contained.

### ***Sound Meters***

Sound meters can provide a method of regulating outdoor live entertainment for compliance with an updated noise/sound ordinance. Granting a permanent entitlement through either a permitted or conditional use in the CZO could be accompanied by a requirement for a sound meter at the property's edge. Sound meters can be linked directly with City regulators or a third party. Ideally, sound meters would cause the operator to self-regulate.

### ***Physical design of outdoor space***

The physical design of outdoor space used for live entertainment can play an important role in minimizing any impacts to neighboring properties. Some design characteristics can be simple, common-sense measures such as gravel instead of concrete patios, and directing speakers and instruments away from the closest properties, to the greatest extent possible. Other design elements may be more complex, such as using sound absorbing materials on buildings, installing solid walls or fences without gaps, or having a clamshell behind the band.

### ***Sound Studies***

Individualized sound studies for establishments providing outdoor live entertainment could be required in some situations. Experts in the field can offer consultation in placement of amplification equipment, the use of building materials, wall/fence materials and height, placement and use of a sound meter, sound levels, and use of a “governor” on sound equipment. Due to the expense, sound studies and certain physical design changes such as walls, should not necessarily

be required for every establishment, but perhaps triggered by a request for longer hours of operation of outside entertainment, or very close proximity to residential districts. The sound study may also only be required along with an approval, so that the cost is not incurred until the operator knows they will have an opportunity to function and recoup those costs.

A grant program could be most useful in helping to finance a sound study and/or physical mitigation strategies. A public-private partnership between the City and philanthropic organizations could be an investment in the city's cultural economic development while also addressing equity issues. The involvement of a public-private partnership could also create an economy of scale to provide affordable access to a sound expert.

***Allow historic music venues to be reestablished at sites where such former use is identified.***

Many of New Orleans' neighborhood music venues and performance spaces are legal non-conforming uses and in danger of permanently losing their ability to have live entertainment. If one of these bars or venues was to close for more than 6 months, they would no longer be able to host live music, no matter how long they had done so previously. In order to preserve the location as an important cultural space, venues and barrooms that can prove a history of hosting live entertainment should be able to be reestablished as music venues.

## VIII. PLANNING RECOMMENDATIONS

In addition to the zoning recommendations above, the Outdoor Live Entertainment Study considered more broad goals and strategies to protect and strengthen New Orleans' culture of live entertainment. Some recommendations which haven't been fully implemented can be found in the City's Master Plan Chapter on Arts & Culture. Other recommendations are derived from the Study's review of best practices in other cities. Perhaps most important are recent recommendations from New Orleans' culture bearers who are struggling from COVID-19 and the recession.

***Conduct a comprehensive survey of existing musically, historically, and spiritually important cultural sites should be completed, and site should become eligible for protection.***

Historic places or corridors known for live entertainment may not all be within zoning districts or Arts & Cultural overlays that permit live entertainment whether indoors or outdoors. Arts & Cultural overlays have been a successful strategy to establish or re-establish a live entertainment scene in areas where the community supports it without having to deal with citywide implications. The City should invest in buildings with a history of live entertainment. Loosening outdoor live entertainment regulations for such sites may be one more tool to help revitalize a building, business, or corridor. A community led survey must be undertaken to examine which sites remain, as well as their current status and threat level. Once sites are identified, the appropriate steps for preservation can be undertaken.

***Develop a grant program for sound proofing businesses with an emphasis on music venues.***

The most common complaint/point of opposition to live music venues is potential or actual excessive sound. This problem is especially acute in neighborhoods where the buildings are old and in close proximity. Physical sound mitigation measures may be cost-prohibitive to disadvantaged businesses and smaller outfits. To address this issue, the City should develop a grant program that would allow small, locally owned cultural businesses access to sound proofing or sound meters as part of a regulatory plan.

***Ensure equitable fee structures for live entertainment permits.***

Live entertainment venues that charge a cover should not have to pay a higher fee than those that offer 'free' entertainment, as that creates a disincentive to pay performers a fair wage and devalues their work and product.

***The City should take a more prominent role promoting New Orleans culture and live entertainment.***

A prominent theme that surfaced in the stakeholder engagements was that the City should actively invest in the culture that is the principal base of the tourism industry and mobilize city resources for the promotion of the local music community and culture bearers. For example, where possible the City could subsidize the arts, culture and live entertainment that form a paramount part of the City's economic base. The formation of an advisory committee and Live Music Fund would also

be advantageous in promoting the city's music and cultural traditions in a formalized public deliberative body.

***Create a Music and Culture Advisory Group or Commission.***

In order to implement some of these goals, the City might consider establishing a Music and Culture Commission and fund for supporting live music with Austin's Music Commission and Live Music Fund, the Detroit Entertainment Commission (DEC), and the San Francisco Entertainment Commission as prototypes for emulation. Additional studies may be necessary concerning the mechanics and implementation of promoting live music and the formation and composition of a Music and Culture Commission, as well as specific sources of funding and eligibility criteria for a Live Music Fund. However, such a commission might also be empowered to partially resolve disputes arising between stakeholders (residents, musicians, venue operators, property owners, et al.) and would give members of the arts and music community a sense of ownership in decisions regarding policy design and funding that have direct impacts on them. The staff would recommend a requirement that at least half of the commission has musicians/cultural-bearers as commissioners and that it is a process similar to the City Planning Commission's Design Advisory Committee and the Historic District Landmarks Commission's Architectural Review Committee so as to not burden those cases going through the conditional use process with a longer timeline, but one that folds into the existing review framework.

***Establish a system to notify new property owners and residents of proximity to live entertainment establishments.***

Another prominent theme that surfaced in the staff's case study research was the example of being legally obligated to notify new renters and buyers whose residence would be within a close proximity to an already established live entertainment venue. This concept would likely need to require notification only for later night venues, rather than the early hours that this Study believes is compatible with residential uses. This would resolve a variety of input related to the conflict between musicians and cultural-bearers, business owners of (outdoor) live entertainment venues, and residents and neighbors. The burden for new business owners of (outdoor) live entertainment is often to reach out to neighbors through the Neighborhood Participation Program (NPP) and go through the 4-6 month conditional use process; therefore in an effort to be equitable, new residents should be made aware of the existing businesses they may find unsuitable to their living conditions. This would hopefully increase compatibility of live entertainment and residential uses.

***Establish a "Nightlife/Entertainment/Cultural Economy Advocate" or similar position.***

In conjunction with creating and making publicly available a user guide for live entertainment venues, the City of New Orleans should create the position of a Nightlife/Entertainment/Cultural Economy Advocate, similar to Seattle's Nightlife Business Advocate. This would allow business owners, musicians, and culture-bearers a centralized and knowledgeable person to give them an overview of the processes in navigating our regulatory framework and give them an individualized

range of options for their proposals. The staff envisions said position naturally being housed in the Office of Cultural Economy, while coordinating with the Department of Safety and Permits and City Planning Commission.

***Establish an enforcement system and method for resolving conflicts as it relates to entertainment venues.***

One aspect that was abundantly clear in our outreach, from neighborhood associations to musician & entertainment advocates, is that complaint-based enforcement is problematic. Residents often feel that businesses are excessively noisy and bad neighbors while business owners and cultural bearers feel that they're often unduly penalized through complaints by neighbors who are overly sensitive and disregard the historic and or cultural nature of their establishment. Neighbors often call the police, which seems like overkill for a violation that may deserve only a warning or citation. Neighbors have a right to peace and sleep, but musicians and cultural bearers have a right to earn a living and continue adding to the City's centuries-long cultural legacies, many of which are rooted in local customs and traditions. Much of this dynamic is fueled by criticism that there is a lack of enforcement, which speaks to the need for an adequately funded and equity-trained enforcement office. There must be a willingness on the part of the City to provide night-time enforcement personnel. To help with this goal, the staff recommends an enforcement system with four key components:

1. System of inspections and enforcement

The City should replicate systems that have already been designed that are equitable and sensible. Enforcement should use objective criteria like the proscribed hours of operation for outdoor live entertainment.

2. Be conscious of potentially antagonist/racist/classist complaints. Enforcement must be based on the objective criteria.
3. Penalties to be fines and land use permission revocations only.

## **IX. NEXT STEPS**

The City Planning Commission will hold a public hearing and consider the Outdoor Live Entertainment Study. At this meeting, the CPC may vote to forward the Study to the City Council with or without modifications. The CPC may choose to endorse particular components of the Study's recommendations, or merely forward to the Council for its information and fulfillment of Motion M-20-5. If additional time, information, or analysis is desired, the CPC could also defer final consideration to a future meeting. The CPC can ask the staff to amend the Study or report back with additional information or analysis at that subsequent meeting. The CPC could also refer the Study to its Planning & Special Projects Committee.

Once the City Council receives the Study, they may take as long as needed to read and consider their options. The Council is under no legal obligation to act upon the Study. They may choose to consider the recommendations in a Committee meeting or they may take steps to consider zoning text changes and program development options that are discussed in the Study. If the Council passes a motion to implement any text changes based on the Study, an additional round of public hearings would be triggered. The City Planning Commission would docket the proposal, write a staff report recommending specific zoning text changes, and hold a public hearing before making recommendations to the City Council. The Council must hold its own public hearing before adopting amendments to the Comprehensive Zoning Ordinance.