



To: Mayor Lee Leffingwell and Members of the City Council

From: Gregory I. Guernsey, AICP, Director,
Planning and Development Review Department

Date: March 17, 2010

Re: Impacts of Outdoor Music Venue Ordinance # 20090312-017

Background

Council adopted an ordinance enhancing the review process for Amplified Sound/Outdoor Music Venues on March 12, 2009. The ordinance was passed in response to neighborhood concerns and recommendations from the Music Task Force. The Outdoor Music Venue (OMV) ordinance:

- Established application review criteria (30-day review by a multidisciplinary team)
- Requires notification to single family uses and neighborhood organizations, and multi-family uses with a new permit when it is located adjacent or within close proximity (600') of the proposed OMV
- Established appeal rights for the first time for interested parties
- Clarified hours of operation and decibel limitations applicable to restaurants

Processing of Applications

Staff review of an OMV application consists of public notification of application filing within 14 days of the submittal date, review of the application, a site visit, confirmation of the number of sound violations from the Austin Police Department, issuance of the permit approval or permit denial, and responding to inquiries from citizens once notification has been sent.

Qualified individuals may file as an interested party, prior to the Director's approval or denial of an OMV permit. Once an action is taken on an application, an interested party may appeal the Director's decision to the City Council.

Although average review time for an OMV permit paperwork is approximately one hour, neighborhood's competing interests with business owners has resulted in increased City staff time to address questions from interested parties, conduct site visits and facilitate meetings between the applicant and interested parties..

City staff review of each OMV application consists of:

- Researching the site to determine that all structures are legal and the use is permitted;
- Obtaining a venue's occupant load, as determined by the Austin Fire Department;

- Contacting Austin Police Department (APD) to retrieve and assess history of complaints for OMV renewals;
- Visiting the site to provide input regarding sound mitigation, such as building design; placement and orientation of sound equipment; stage location; and buffering (landscaping and fencing) to mitigate sound;
- Compiling affected addresses and sending notification; and
- Reviewing following criteria as it applies to an application:
 1. Zoning Compatibility.
 2. Land Use Compatibility.
 3. History APD Sound Violations at venue address.
 4. Proposed stage or outdoor speaker orientation.
 5. Proposed buffering (fence/wall/etc) or other sound mitigation proposed by owner or recommended by staff.
 6. Review of agreements between the venue operator and adjacent neighborhood or property owner(s).
 7. History of approvals or denials of similarly situated outdoor music venues.
 8. Proposed capacity of venue.
 9. Making sure the venue has the proper operation permits (has a certificate of occupancy for a cocktail lounge or restaurant) or obtains a Temporary Use Permit with appropriate off-street parking.

Administrative conditions applied to a permit must be reasonably related to the direct impacts of the particular venue and not used to mitigate overall site impacts, such as lighting or traffic generation. In addition, conditions applied to a permit must be applied in a fair and consistent manner that would be similar to similarly situated venues.

Fees

The previous permit fee was not increased by the new ordinance and remains at \$50.00. The fee does not adequately support staff time to conduct a review and respond to inquiries once the notification has been sent. The new notification fee is \$193.00. From July, 2009 through December, 2009 the cumulative total of notices SENT was 1,666 for 17 applications. The number of notices varies for each application.

Approvals

As of 2/22/2010, 24 applications approved, 7 of which were approved with conditions agreed to by applicant and neighborhood organizations. The agreed conditions have altered sound amplification hours permitted during the week. Thirty OMV applications are currently pending review.

Appeals

The OMV ordinance established an opportunity for interested parties or applicants to appeal staff's determination to City Council. To date, two approvals of new OMV permits have been appealed by neighborhood organizations to the City Council. One appeal granted, reversing the OMV permit issued for Sustainable Waves, a commercial use at 4822 East Cesar Chavez Street. In the most recent case, Council modified the permit for a cocktail lounge known as Little Woodrow's at 2610 Guadalupe Street, reducing the decibel limits to 70 decibels.

Neighborhood Issues

OMV permits have been met with considerable resistance, regardless if the permit is for a new permit or a renewal permit. Part of this resistance may result from the new OMV notice and appeal process that did not exist previously. Neighborhood representatives have expressed a variety of concerns including:

- The inability for an OMV permit to be appealed before it is issued
- Compatibility to surrounding residential uses
- Types of music played and the interior design of an establishment
- Maximum decibel level (85 db) allowed by the ordinance
- Hours and days of operation
- Inability for the City to enforce different decibel levels for different days or hours in a week.
- Sound exceeding permissible decibel levels
- Consistent enforcement by the Police Department of decibel maximum
- Location and lack of venue parking
- Litter

Some neighborhoods have reached agreements with the venues on hours/days of sound amplification, such as not permitting amplified sound after 8:30 p.m. on weeknights, or 10:00 p.m. instead of midnight on Fridays and Saturdays.

OMV Operator Issues

Applicants have expressed concerns over the \$193.00 notification fee and the increased processing time for each application. They also have concerns about the level of involvement by the neighborhood organizations, especially when adjoining neighbors are not opposed to their permit. Some have objected to the ability of an interested party to ask them to adjust their hours of sound operation to less than what the ordinance allows. However, in some cases neighborhood agreements have been reached. The Zilker Neighborhood Association came to agreements with Shady Grove, Uncle Billy's, Baby A's and Austin Java regarding hours when music could be played prior to approval of the OMV permit.

Staff Recommendations:

The OMV permit process is complicated for both venue operators and interested parties to understand and for City staff to administer. Applicants do not like the fact that a permit may be appealed, while neighborhood residents do not like the fact that a permit may only be appealed after it is issued. In addition to the OMV permit, other permits may be required to operate a legal venue, such as a temporary use permit (typically for businesses other than a restaurant or cocktail lounge) and/or a building permit to bring a venue's improvements into compliance with health safety codes.

The new notice and appeal provisions have added greater transparency to the OMV process, but require a considerable amount of staff time to assist interested parties and applicants with the process, appeals or mediation. The fee for an OMV permit is inexpensive compared with most City development fees, but it does not adequately cover the amount of time staff spends processing these applications. Finally, the options for an applicant/operator of an OMV are limited to either an annual OMV permit or a single event permit (Sound Amplification Permit), which is insufficient to accommodate multi-day events. To address these issues raised by the OMV permit process staff offers the following recommendations:

1. Amend the existing 96 hour sound amplification permit ordinance beyond its current expiration date of June 30, 2010. This would allow venue operators a choice between an annual OMV permit and a 96 hour single event permit. In addition, Staff recommends a menu of limited hour single event permits be created that would allow venue operators to hold a certain number of multi-day events throughout the year. Such a system would increase the efficiency and effectiveness of the OMV system by allowing the City to focus its limited resources more directly on venues that will stage outdoor music on a regular basis and thus have the most impact on the community.

2. Amend the ordinance to apply only to amplified sound associated with live music events and not amplified sound from other sources. Amplified sound from other sources would be regulated under the existing nuisance ordinances. *However, if the City Council desires to establish a limitation on amplified sound from sources other than live music, then staff would suggest a maximum of 70 db for venues adjacent to residential areas as measured at the property line. This is the same decibel limitation applied mechanical equipment adjacent to a single family residence under zoning compatibility standards.*
4. Authorize the Director to deny a Sound Amplification Permit (24 hour or 96 hour permits) based on criteria similar to those used in reviewing an OMV application. (Currently, the ordinance provides no authority to deny a sound amplification permit if the application requirements are met). This would allow the director to deny a permit based on specific criteria, such as a venue operator incurring more than two violations of other sound amplification permits in the past calendar year.
5. Require all OMV permit holders to keep and maintain a working decibel meter at each establishment. This would allow the operator to regulate themselves and lessen the possibility of exceeding the maximum permitted sound level.
6. Amend the ordinance to establish a procedure to surrender an OMV permit once it has been denied. Currently, the ordinance does not provide a formal procedure to revoke a permit.
7. Clarify that the term “property” in the ordinance means zoning. Currently, the ordinance does not define what is meant by the term property.
8. Recommend that City Council clarify the limits of the City’s authority to require more restrictive decibel limits or hours of operation for outdoor music venues than currently allowed under the ordinance. While the ordinance does not prohibit staff from imposing more restrictive conditions on decibel limits or hours of operation, doing so presents significant administrative and operational challenges for permitting and enforcement. Additionally, it is important from a legal standpoint that conditions be imposed fairly and uniformly. Accordingly, we recommend either uniform requirements for decibel limits and hours of operation for all venues or adopting clear, non-subjective criteria for determining when to impose greater decibel or hours restrictions than required by the current ordinance.

In addition to the list of recommendations above, Staff will make changes over the next year that will alter the notice of application filing by making it easier for the public to understand and to identify a venue’s location. A second change will reduce the physical size of the OMV permit and clarify where the permit must be maintained on the property. This will make it easier for the venue operator to display the permit closer to an entrance where many other advertising (ex. daily specials, credit cards accepted, hours of operation etc.) are already displayed.

If you have any questions, please contact me at 974-2387 or by e-mail at greg.guernsey@ci.austin.tx.us .