

RESOLUTION NO. 20181018-038

WHEREAS, City Council has previously directed the development of an “agent of change” policy by adopting Resolution Nos. 200111215-060, 20160303-019, and 20170126-040; **NOW, THEREFORE,**

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

The City Council directs the City Manager to propose programs, rules, and ordinances necessary to improve compatibility between residents, lodging establishments, and music-related businesses so that they may co-exist peacefully and amicably share in Austin’s world renowned night time economy and to help live music venues and their communities to grow and prosper together.

BE IT FURTHER RESOLVED:

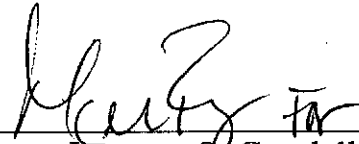
The City Council directs the City Manager to consider stakeholder suggestions, including those found in Exhibits A, B, and C of this Resolution and other recommendations identified in the course of the stakeholder feedback process, which may include, but not be limited to the Downtown Austin Alliance, Texas Hotel & Lodging Association, Music Venue Alliance, Downtown Austin Neighborhood Association, Rainey Business Coalition, Red River Merchants Association, Austin Neighborhood Council, and Friends of Austin Neighborhoods among others.

BE IT FURTHER RESOLVED:

The City Council directs the City Manager to return to City Council with a stakeholder-informed proposal no later than 120 days from the date that this Resolution is adopted.

ADOPTED: October 18, 2018

ATTEST:



Jannette S. Goodall
City Clerk

EXHIBIT A



September 26, 2018

Dear Mayor and Council,

We would like to follow through with our commitment to advise on an important matter to the venue community, Agent of Change. In June 2017, a staff version of the policy was removed from Council agenda, after significant outcry from our group, as well as representatives from Austin Neighborhood Council and Hotel Lodging Association. After months of stakeholder groups and research, the staff proposal missed the mark, and actually increased risk and cost for the venue community. At that time, Music Venue Alliance agreed to work with the other stakeholders to provide an alternative draft, with unanimous support.

Since the item was pulled, there has been significant change in personnel in the Economic Development Department. Agent of Change has been passed around multiple times, and this has caused serious delays. The purpose of this letter is to say that we are still unable to support the most recent effort presented to us by staff, and that we are ready to make our recommendation. This recommendation meets the needs of the venue community, and reflects input from ANC, HLA and DAA.

Agent of Change

This plan seeks to establish clear guidelines for building new developments where entertainment establishments and residents/guests are in close proximity; determine who the responsible party is between existing entertainment establishments and residences/hotels, as well as provide clear protocol for responsible operation of entertainment establishments. The purpose is to preserve quality of life for residents, while securing stability for hotels and entertainment businesses. The method will be a combination of acknowledgement of the proximity by all parties, disclosure to new buyers/tenants of the proximity, and implementation of proven and verifiable soundproofing and sound mitigating measures.

Entertainment Establishment includes music venues, bars, nightclubs, and any business with an outdoor music permit. This will provide protection for investors, developers, residents, and guests.

So long as an entertainment establishment is operating within legal limits, per the Sound Ordinance, the sound emanating from the establishment is not a public or private nuisance. Therefore, residents and guests acknowledge that legal sound should not put an

entertainment establishment at risk of loss of business or closure. Compliance with the Sound Ordinance will be consistently monitored and enforced by the City.

When a new hotel or residence seeks to build within a distance (to be tied to land use tier, so that the distance will be variable by area and density) of an entertainment establishment, plans for soundproofing/mitigating measures will be presented and approved in order to receive a building permit. Measures will need to achieve 45 dba within residential and hotel units, per the recommendation of the World Health Organization. The new development and established business may negotiate whether it is most effective to only proof the new building, install technology or insulate the entertainment business, or a combination of the two. Flight path construction will inform this process.

For existing entertainment establishments, residences and hotels:

Clear disclosure must be made on sale and lease agreements for residents purchasing/leasing units within the designated distance from an entertainment establishment.

In order to identify which venues need this protection, we propose a new land use for live music venue. After more than a year's time of consideration, and vetting from multiple City departments, MVA has arrived at a definition of live music venue that is narrowly tailored and captures the essential elements. We ask that this be the defined new land use:

Preamble

Defining a cultural asset requires a general "common sense" reading that can be flexible over time. Verifiable elements must show that music is the primary driver of business, and/or the business is a music destination. This can be shown by the existence of a combination of factors that show a relationship with the musicians that does not exist in businesses that provide music as atmosphere.

1) This begins with a process by which the venue clearly articulates to the artist the ability of an artist to receive payment for work by **percentage of sales** (bar and/or door cover) *i.e. sales performance payment, guarantee (in writing) i.e. standard contract*, or another mutually beneficial formal agreement, and

2) A factor test.

A retail business that is a destination for live music consumers and its music programming is the primary driver of its business, as indicated by the presence of at least five (5) of the following: (1) defined performance and audience space, (2) mixing desk, PA system, and lighting rig, (3) back line, (4) at least two of: sound engineer, booker, promoter, stage manager, security personnel, (5) applies cover charge to some music performance through ticketing or front door entrance fee, (6)

marketing of specific acts through gig listings in printed and/or electronic publications, (7) hours of operation coincide with performance times, (8) produces music performances at least five (5) days a week.

We cannot support a triggering mechanism based on additional registration or permitting. We also cannot support a protection for some venues, but not others.

In order for ANC, DAA, and HLA to agree to these terms, we committed to asking for improvements to sound monitoring and violation enforcement. We believe it is the City's duty to create fair and transparent guidelines, and to enforce them consistently. Following are our recommendations on how that should be done.

- The Outdoor Music Venue permit needs to be renamed Outdoor Amplified Sound Permit. Not all permit holders are music venues.
- Renewal of this permit should be extended from one year to two years. Businesses with no violations, not simply complaints, should receive an abbreviated pass through renewal.
- Outdoor Amplified Sound Permits should only be granted to businesses that direct sound to an area enclosed within its property perimeter, not to a public space.
- Businesses without an Outdoor Amplified Sound Permit should be consistently held to compliance with Austin's Sound Ordinance.
- Outdoor Amplified Sound Permits will still include individualized sound impact plans. These sound impact plans should contain not only dba limits, but dbc limits as well. Dbc data should be cataloged over a two-year period. At the end of the study period, the permitting department should make a recommendation on dbc levels in the Sound Ordinance. The recommendation should reflect workable levels as reflected by the collected data.
- Sound monitoring should begin with technology. There are at least two companies that have provided workups for pilot programs in the downtown area. These companies make sensors that can be placed on light poles to collect sound and other atmospheric measures. This data can be seen remotely. Either DAA, and/or the City, need to commit to installing this technology as soon as possible. Sound monitoring by humans is faulty, inconsistent, and expensive.
- When an overage is recorded, or a sound complaint made, swift response by the Music Office's night and weekend ambassador should follow. This person must be deputized with citation writing authority. Notices of overage, without any consequence, have proved meaningless and wasteful. APD or other municipal enforcement agencies are not equipped, and are not well-suited for, this role.
- When an establishment has earned enough citations in the requisite period, suspension of the Outdoor Amplified Sound Permit must follow, every time. This is not currently happening.

- When it is determined that an establishment is operating within the law, but regular operations still present an inconvenience for neighbors, MVA members have agreed to work with DAA and HLA on partnered arrangements for joint advertising and concessions as means of recovering unhappy guests/residents.

We are confident that when the rules are consistently enforced, it will become clear that music venues are committed to staying compliant.

Please consider MVA a resource and partner. We are grateful for your diligent efforts to make the best decisions for Austin.

Take care,

Rebecca Reynolds
President
Music Venue Alliance Austin
512-825-9884
Rebecca@musicvenueatrust.com
Musicvenueallianceaustin.com

EXHIBIT B



Dear Austin City Staff:

We are writing to indicate what the Austin hotel and lodging industry would respectfully ask to be included in the proposed redraft of the Austin noise ordinance. Our goal is to achieve a reasonable compromise on the regulations and enforcement contained in any future ordinance. To achieve this result, we would suggest the inclusion of the following items:

- Allow for DBC-weighted measurements (with reasonable decibel levels). The adopted threshold should ensure that existing and future music venues have a reasonable opportunity to operate and also ensure that other businesses and residences within the sound path will be able to operate in a reasonable manner and have enjoyment of their properties.
- Vibration provisions should apply to music establishments and not just vehicles and watercraft.
- Allow enforcement officers to measure sound from within a complainant's property or by some other equally or more effective mechanism.
- Allow submission of compliance plans for noise violators in exchange for a limited grace period of warnings instead of citations.
- Sound measuring equipment must be made available to enforcement officers that is sufficient to provide DBC-measurements. The field enforcement personnel need the tools to accurately and fairly accomplish these measurements.
- When the burden of compliance is on an offending business, the ordinance needs to include some type of automatic "pull the plug" enforcement mechanism that can be implemented after reasonable notice and grace periods have expired.

We hope that the above suggested provisions are helpful in achieving a mutually beneficial ordinance to address this vital issue.

Sincerely,

Brian Sullivan
Deputy General Counsel
Texas Hotel & Lodging Assn.

Denise Eisman
President
Austin Hotel & Lodging Assn.

**SOCIAL
KNOWLEDGEABLE
INFLUENTIAL**

EXHIBIT C



Chris Riley
President

Oct. 8, 2018

Eileen Portner
Vice President

Mayor and Council of the City of Austin
301 W. 2nd Street
Austin, Texas 78701

Jarrad Toussant
Secretary

Adam Levinson
Treasurer

RE: Agent of Change policy -- agenda item #38

Jaden Black

Mayor, Mayor Pro Tem, and Council Members:

Steven Blackmon

Item 38 on your agenda for Thursday is a resolution directing the City Manager to consider stakeholder suggestions provided in regard to the proposed "Agent of Change" policy. The resolution refers to a letter from the Music Venues Alliance, included in the backup as Exhibit A, setting out some recommendations.

Erica Diaz

Philip Wiley

Kristina Witt

On behalf of the Downtown Austin Neighborhood Association, I want to convey our concern that these recommendations seem to have been developed with little or no input from downtown residents. The letter states that it "reflects input from ANC, HLA and DAA." The ANC has excluded DANA from its membership, and none of the organizations mentioned has sought input from DANA. Downtown residents were involved in previous discussions on the agent of change policy, but DANA has not heard any updates since late May 2017.

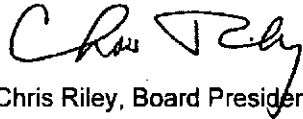
Substantively, our board is concerned about several aspects of the MVA's recommendations, including the following:

- The letter states, "So long as an entertainment establishment is operating within legal limits, per the Sound Ordinance, the sound emanating from the establishment is not a public or private nuisance." That assertion is inconsistent with state law, and could be very problematic for residents.
- The letter also states that when an establishment's noise presents an inconvenience for neighbors, "MVA members have agreed to work with DAA and HLA on partnered arrangements for joint advertising and concessions as means of recovering unhappy guests/residents." That agreement seems inadequate. Many downtown residents – including those in the Rainey, Northwest, and Market/Lamar districts – live outside the DAA's boundaries, and have no connection to the Hotel & Lodging Association.

As stated in our email to Council on 5/26/2017, we recognize the need for Austin to maintain a thriving music scene, and we support the concept of the agent of change policy as previously proposed. But we urge the Council to ensure that concerns of downtown residents are identified and addressed as the policy continues to take shape.

Thanks for your service, and for your consideration of this input.

Regards,

A handwritten signature in black ink, appearing to read "Chris Riley". The signature is written in a cursive, slightly slanted style.

Chris Riley, Board President
Downtown Austin Neighborhood Association