

CHAPTER 9-2. NOISE AND AMPLIFIED SOUND.

ARTICLE 1. GENERAL PROVISIONS.

§ 9-2-1 DEFINITIONS.

In this chapter:

- (1) ACCOUNTABLE OFFICIAL means the City officer or employee designated by the city manager with a particular administrative or enforcement responsibility under this chapter.
- (2) C-WEIGHTING means a frequency response adjustment of a sound level meter with a "C-weighting" filter, as defined by the American National Standards Institute, that analyzes the sound source signal with approximately equal weight to all frequencies. Measurements made with this weighting are designated "dBC."
- (3) DECIBEL means sound pressure level as measured by a sound level meter using the "A" weighting network and either the slow or fast meter response as specified by the American National Standards Institute.
- (4) GOOD NEIGHBOR POLICY means a set of good business practices required as a condition of an Outdoor Music Venue permit issued under this chapter.
- (5) MOBILE RESPONSE CODE means a two-dimensional bar code that can be read through applications available on a smartphone or other mobile device and linked to information available online.
- (6) MUSIC OFFICE means the division or working group of a city department designated by the city manager with advisory and administrative functions related to permitting of outdoor live music.
- (7) NOISE means sound which:
 - (a) is louder than that permitted in this chapter, or
 - (b) disturbs a reasonable person of normal sensibilities.
- (8) OUTDOOR MUSIC VENUE means a commercial property where sound equipment is used to amplify sound that is not fully enclosed by permanent, solid walls and a roof.
- (9) RED RIVER CULTURAL DISTRICT means the area:
 - (A) that begins at the intersection of 7th Street (East) and the west bank of Waller Creek;
 - (B) north along the west bank of Waller Creek to 11th Street (East);
 - (C) west along 11th Street (East) to Red River Street;
 - (D) north along the east side of Red River Street to 12th Street (East), including the property located at the northeast corner at the intersection of 12th Street and Red River Street;
 - (E) south along the west side of Red River Street to 11th Street (East);
 - (F) west along 11th Street (East) to Trinity Street;
 - (G) south along Trinity Street to 9th Street (East);

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- (H) east along 9th Street (East) to Neches Street;
 - (I) south along Neches Street to 7th Street (East); and
 - (J) east along 7th Street (East) to the west bank of Waller Creek, the place of beginning.
- (10) RESPONSIBLE PARTY means a sound engineer, audio professional, or other person authorized to make decisions regarding the use of sound equipment permitted under this chapter.
- (11) SIXTH STREET DISTRICT means the area:
- (a) that begins at the intersection of IH-35 and Fifth Street (East);
 - (b) north along IH-35 to the intersection of Seventh Street (East);
 - (c) west along Seventh Street (East) to Congress Avenue;
 - (d) south along Congress Avenue to Fifth Street (East);
 - (e) east along Fifth Street (East) to IH-35, the place of beginning.
- (12) SOUND EQUIPMENT means a loud speaker, public address system, amplification system, or other sound producing device.
- (13) SOUND IMPACT PLAN means a plan required in connection with approval of an Outdoor Music Venue permit under Section 9-2-39 (*Outdoor Music Venue Permit*).
- (14) SPECIAL EVENTS OFFICE means the division or working group of a city department designated by the city manager with planning, coordinating, and overseeing special events requiring city approval.
- (15) SPRING FESTIVAL SEASON means Friday of the second week in March through Sunday during the third week of March, unless the city manager designates an alternate ten-day period for a particular year.
- (16) TEMPORARY CHANGE OF USE PERMIT means a permit issued by the building or fire code official to authorize a temporary increase in occupancy levels allowed by applicable technical codes for a property or structure.
- (17) TEMPORARY EVENT IMPACT PLAN means a plan required in connection with approval of a temporary event permit under Section 9-2-52 (*Temporary Event Impact Plan*).
- (18) TEMPORARY USE PERMIT means a permit issued by the Planning and Development Review Department under Chapter 25-2, Article 6 (*Temporary Uses*) to authorize a temporary activity not otherwise allowed as a principal or accessory use in a base zoning district.
- (19) WAREHOUSE DISTRICT means the area:
- (a) that begins at the intersection of Congress Avenue and Cesar Chavez Street;
 - (b) north along Congress Avenue to Fifth Street (West);
 - (c) west along Fifth Street (West) to Guadalupe Street;
 - (d) south along Guadalupe Street to Cesar Chavez Street; and
 - (e) east along Cesar Chavez Street to Congress Avenue, the place of beginning.
- (20) WATERCRAFT means a boat or other structure designed to float on water, and includes a barge, marina, or similar floating object.

Source: 1992 Code Section 10-5-1; Ord. 031023-13; Ord. 031211-11; Ord. 20090312-017; Ord. 20090226-028; Ord. 20091105-026; Ord. 20110210-029; Ord. 20110609-039; Ord. 20111215-055; Ord. 20130822-033; Ord. No. 20141106-021, Pt. 1, 11-17-14; Ord. No.20180426-008, Pt. 2, 5-7-18.

§ 9-2-2 APPLICABILITY.

- (A) This chapter does not apply to:
- (1) an employee of a governmental entity engaged in the employee's official duty;
 - (2) a person at a stadium or ball-park during a sports event;
 - (3) a person at an authorized parade or street event;
 - (4) a person operating a bell for a religious activity;
 - (5) a person operating an emergency vehicle; or
 - (6) a person operating an audible warning device on a vehicle or train as required by state law.
- (B) This article does not apply to a person issued a permit that authorizes the use of sound equipment.

Source: 1992 Code Section 10-5-2; Ord. 031023-13; Ord. 031211-11.

§ 9-2-3 GENERAL RESTRICTIONS.

- (A) A person may not:
- (1) use or permit the use of sound equipment at a business in excess of the decibel limits prescribed by this chapter;
 - (2) make noise or play a musical instrument audible to an adjacent business or residence between 10:30 p.m. and 7:00 a.m.;
 - (3) operate a machine that separates, gathers, grades, loads, or unloads sand, rock, or gravel within 600 feet of a residence, church, hospital, hotel, or motel between 7:00 p.m. and 6:00 a.m., except for the installation of concrete as authorized under Section 9-2-21 (*Permit for Concrete Installation During Non-Peak Hour Periods*);
 - (4) use or authorize or allow the use of a vehicle, equipment, attachment, or device associated with a vehicle, for cold hold, refrigeration, or freezing of any consumable food or beverage product, including water in any form such as consumer ice or ice used to refrigerate food or beverage, between 7 p.m. and 6 a.m. if noise or sound originating from the vehicle or any associated equipment (such as an engine or generator, equipment, attachment, trailer or device) is audible or causes vibration at a residence;
 - (5) operate sound equipment in a vehicle audible or causing a vibration 30 feet from the equipment; or
 - (6) operate sound equipment in a watercraft audible or causing a vibration 100 feet from the equipment.
- (B) It is an affirmative defense to a violation of this section that:
- (1) the audible sound or vibration occurred when the vehicle or associated equipment or device was being actively loaded, unloaded, or serviced in a manner that complied with all applicable codes, ordinances, and regulations;
 - (2) the audible sound or vibration:
 - (a) occurred when the use of the vehicle or associated equipment or device occurred for a period of 48 hours or less on or adjacent to the premises of a business licensed by the health authority to prepare, serve, or sell consumable food or beverage items; and

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- (b) that the use was the minimum necessary for the licensee to achieve or maintain temporary cold hold, refrigeration, or freezing of potential hazardous food products because of a documented emergency at the licensed premises, such as an equipment or utility failure or malfunction that prevented or compromised the compliant operation of equipment necessary for food safety; or
 - (3) at least 48 hours in advance of the alleged conduct:
 - (a) the person charged obtained consent to the noise or vibration, as described in this chapter, from at least one adult resident of each affected dwelling unit located on a property within 600 feet of the location where vibration or sound was apparent; and
 - (b) the consent was provided in writing, on a form approved by the City.
 - (C) The City Manager may authorize a department to adopt rules under § 1-2 (*Adoption of Rules*) to implement, administer, enforce, or comply with Chapter 9-2.
 - (D) Violation of Chapter 9-2 or any rule adopted under § 1-2 pursuant to Chapter 9-2 is a violation of City Code, chargeable as a Class C misdemeanor by a fine upon conviction not to exceed \$500. Proof of a culpable mental state is expressly waived.

Source: 1992 Code Section 10-5-3; Ord. 031023-13; Ord. 031211-11; Ord. 20080618-036; Ord. 20091105-026; Ord. 20110609-039; Ord. 20111215-055.

§ 9-2-4 RESTRICTION ON DECIBEL LEVEL.

A person may not operate sound equipment at a business that produces sound:

- (1) in excess of 85 decibels between 10:00 a.m. and 2:00 a.m., as measured at the property line of the business; or
- (2) is audible at the property line of the business between 2:00 a.m. and 10:00 a.m.

Source: 1992 Code Section 10-5-4; Ord. 031023-13; Ord. 031211-11.

§ 9-2-5 RESTRICTION ON USE OF SOUND EQUIPMENT IN A RESIDENTIAL AREA.

- (A) This section applies to property zoned as residential under Section 25-2-32(B) (*Zoning Districts and Map Codes*).
- (B) A person may not use sound equipment that produces sound audible beyond the property line of a residence in a residential area between 10:00 p.m. and 10:00 a.m.
- (C) A person may not use sound equipment audible beyond the property line of a residence in a residential area that produces sound in excess of 75 decibels.

Source: 1992 Code Section 10-5-5; Ord. 031023-13; Ord. 031211-11.

ARTICLE 2. PERMITTING AND OPERATIONAL REQUIREMENTS.

Division 1. General Provisions

§ 9-2-11 PERMIT REQUIRED.

A person must obtain a permit to:

- (1) operate sound equipment audible to the public as prescribed by this article, Chapter 8-1, Article 4 (*Restrictions on Amplified Sound*), and Section 14-8-34 (*Permit Required for the Use of Sound Equipment*); or
- (2) deliver, finish, place, or pour concrete between 7:00 p.m. and 6:00 a.m. in the Central Business District (CBD) base zoning district at property located within 600 feet of a residence, church, hospital, hotel, or motel.

Source: Ord. 20110210-029.

§ 9-2-12 APPLICATION REQUIREMENTS.

- (A) A person seeking a permit to operate sound equipment must complete and file a written application for a permit with the accountable official on a form approved by the accountable official and pay the application fee established by ordinance.
- (B) In addition to any other information required by this chapter, an application for a sound amplification permit must include:
 - (1) the name, address, and telephone number of the applicant;
 - (2) the address or a description of the location of the property where the sound equipment will be used;
 - (3) the time during which the sound equipment will be used;
 - (4) an application fee, if required by separate ordinance; and
 - (5) a statement that the applicant has obtained a copy of this chapter and related administrative rules and agrees to comply with all applicable requirements.

Source: Ord. 20110210-029.

§ 9-2-13 PERMIT ISSUANCE.

Except where otherwise provided in this chapter, the accountable official shall issue a permit to a person who submits an application that meets the requirements of this chapter and pays the applicable fee.

Source: Ord. 20110210-029.

§ 9-2-14 RESTRICTIONS ON PERMITS IMPACTING RESIDENTIAL PROPERTIES.

- (A) The limitations in this section apply to all permits for the use of sound equipment authorized under this chapter.
- (B) The accountable official may not issue a permit for use of sound equipment within 100 feet of property zoned and used as residential, except as authorized under Section 9-2-21 (*Permit for Concrete Installation During Non-Peak Hour Periods*), Chapter 8-1, Article 4 (*Restrictions on Amplified Sound*), or Section 14-8-34 (*Permit Required for the Use of Sound Equipment*).
- (C) The accountable official may issue a permit for use of sound equipment, as authorized by this chapter, for property that is:

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- (1) beyond 100 feet but within 600 feet of property that is zoned and used as residential, between:
 - (a) 10:00 a.m. and 8:00 p.m. on Sunday through Thursday;
 - (b) 10:00 a.m. and 10:00 p.m. on Friday or Saturday; or
 - (c) 10:00 a.m. and 10:00 p.m. on Sunday through Thursday and 10:00 a.m. and 12:00 midnight on Friday or Saturday based on the following factors:
 - (i) agreements with owners and tenants of nearby property;
 - (ii) agreements with representatives of affected neighborhood organizations;
 - (iii) the code compliance history of the site; and
 - (iv) public health and safety based on compatibility with adjacent land uses; and
 - (2) beyond 600 feet of property that is zoned and used as residential, between 10:00 a.m. and 2:00 a.m.

Source: Ord. 20110210-029; Ord. 20120308-036; Ord. 20121018-024.

§ 9-2-15 RESTRICTIONS ON MULTIPLE PERMITS FOR A SINGLE PROPERTY.

- (A) Except as otherwise provided under Chapter 8-1, Article 4 (*Restrictions on Amplified Sound*) or Section 9-2-21 (*Permit for Concrete Installation During Non-Peak Hour Periods*), the accountable official may not issue more than one sound amplification permit under this chapter for the same site or property within 30 days.
- (B) In calculating the number of days under Subsection (A) of this section, the first day is the day after expiration of the most recent sound amplification permit issued for the property.

Source: Ord. 20110210-029.

§ 9-2-16 FEES.

The city council may establish application and permit fees by separate ordinance.

Source: Ord. 20110210-029.

§ 9-2-17 ADMINISTRATIVE RULES.

The director may adopt administrative rules to implement the requirements of this chapter with Chapter 2-1 (*Administrative Rules*).

Source: Ord. 20110210-029.

Division 2. Non-Music Sound Permits.

§ 9-2-21 PERMIT FOR CONCRETE INSTALLATION DURING NON-PEAK HOUR PERIODS.

- (A) For property located within 600 feet of a residence, church, hospital, hotel, or motel, the director may issue a permit under Subsection (B) authorizing an applicant to deliver, place, or pour concrete during the non-peak hour period of 7:00 p.m. to 6:00 a.m. if:

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- (1) the accountable official determines that the delivery, finishing, placement, or pouring of concrete during non-peak hour periods is in the interest of public health, safety, and welfare, or is justified by urgent necessity; and
 - (2) the property is located:
 - (a) within the Downtown Density Bonus area identified in Section 25-2-586(B) (*Downtown Density Bonus Program*); and
 - (b) within one of the following zoning districts:
 - (i) the Central Business District (CBD) base zoning district; or
 - (ii) the Public (P) zoning district.
- (B) The director may issue one of the following permit types for a project if the application meets the general standards in Subsection (A) and complies with the additional restrictions under this subsection, which must be listed as conditions on the permit.
- (1) Type 1 Non-Peak Hour Permit:
 - (a) Maximum sound level: 83 decibels, unless further restricted by a sound management plan.
 - (b) Permitted days during the week: Everyday.
 - (c) Permitted hours: 7:00 p.m. to 12:00 a.m.
 - (2) Type 2 Non-Peak Hour Permit:
 - (a) Maximum sound level: 78 decibels, unless further restricted by a sound management plan.
 - (b) Permitted days during the week: Everyday.
 - (c) Permitted hours: Midnight to 6:00 a.m.
 - (3) Type 3 Non-Peak Hour Permit:
 - (a) Maximum sound level: Unlimited.
 - (b) Permitted days during the week: Everyday.
 - (c) Permitted hours: 7:00 p.m. to 6:00 a.m.
 - (d) The director may only issue a Type 3 Non-Peak Hour Permit if:
 - (i) a special circumstance exists that requires a continuous pour, such as a mat slab or similar foundation pour that would be inconsistent with a Type 1 or 2 permit; and
 - (ii) the permit application includes a letter from a professional engineer of record for the project confirming that late night pour must be continuous and cannot reasonably be divided into multiple shorter pours.
 - (4) Decibel restrictions for Type 1 and Type 2 permits shall be measured at a distance of 75 feet from the sound source, unless further restricted by a sound management plan.
 - (5) If a neighbor adjacent to a site with an active permit under this section alleges a violation of the applicable decibel limit, the accountable official shall deploy sound monitoring equipment to the site and document whether or not the applicable decibel restriction has been violated. The sound data provided by the sound monitoring equipment shall be available to the public in real time, if possible.
- (C) A permit issued under this section must state the duration during which the authorized activity may occur, which may not exceed 72 hours. An applicant may not hold more than one permit under this section for a single project.

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- (D) In addition to information required by Section 9-2-12 (*Application Requirements*), an application to deliver, finish, place, or pour concrete during non-peak hour periods under this section must include:
- (1) the name, address, and telephone number of the applicant;
 - (2) the address or a description of the location of the property where the work will be performed; and
 - (3) the type of permit requested, which must be one of the categories listed in Subsection (B) of this section.
- (E) To mitigate possible impacts and minimize disruptions to adjacent residential, commercial, and civic uses, the applicant is responsible for ensuring that all delivery, placement, or pouring of concrete permitted under this section complies with the requirements of this subsection.
- (1) Notification of the exact date, time, and duration of non-peak hour activity authorized under Subsection (A), as well as 24-hour contact information for the individual with primary responsibility for the project, shall be:
 - (a) provided to city staff and to abutting property owners located next door or across the street;
 - (b) provided to representatives of property owners and residents within 600 feet; and
 - (c) clearly stated on a sign posted on the property at the construction entrance and visible from the street.
 - (2) As a condition to approval of a non-peak hour permit under Subsection (A) of this section, an applicant must comply with a sound and light management plan approved by the accountable official consistent with the requirements of this subsection.
 - (a) A sound and light management plan must identify:
 - (i) where concrete trucks will queue to ensure minimal disruption to adjacent residences, businesses, and civic uses;
 - (ii) where the concrete pump will be located during all phases of construction and provides for an alternate location in the event the accountable official determines that relocating the pump is necessary to minimize disruption to adjacent residential and civic uses;
 - (iii) the location, materials and manner of placement of proposed sound mitigation materials, such as sound baffling, on the property to contain noise from concrete pumps and concrete trucks during high revolutions per minute (RPM) cycles before construction begins; and
 - (iv) the name and cell phone number of the on-site supervisor, who must be on the property during the non-peak hour concrete pour.
 - (b) A sound and light management plan must include provisions that shield after-hour lighting associated with concrete installation from adjacent residential uses.
 - (c) The accountable official may require that a sound and light management plan include additional measures or elements that are reasonably necessary to protect public health and safety and to ensure reasonable expectations of a sound environment that does not prevent sleep.
 - (d) With reasonable notice provided to a permit holder, the accountable official may modify a sound and light management plan for a project under construction to include additional requirements or modifications that are reasonably necessary to address unanticipated changes to the project or impacts on adjacent properties.
- (F) Concrete finishing is permitted from 7:00 p.m. to 6:00 a.m., provided that it does not include delivery, placement, or pouring.

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- (G) This subsection provides for the denial of non-peak hour concrete pour permits if the accountable official finds that a project has accrued violations of this section or of a sound and light management plan required under this section:
- (1) if three or more violations occur within a 30-day period, the accountable official shall not issue a new non-peak hour permit under this section for a period of 30 days from the date of the last violation and shall issue a 30-day suspension letter to the applicant;
 - (2) if six or more 30-day suspensions are issued within any 12-month period, the accountable official may not issue any additional non-peak hour permits for the project; and
 - (3) for purposes of Subsection (G)(2), the 12-month period is reset if less than six 30-day suspensions are issued within 12 months from the date of the first non-peak hour permit issued for the project.
- (H) If an application for a building permit was submitted prior to December 1, 2014, the accountable official shall:
- (1) permit delivery, placement, or pouring of concrete in connection with construction of that building during the non-peak hour period of 7:00 p.m. to 6:00 a.m.; and
 - (2) require a sound and light management plan, as provided in Subsection (D)(2) of this section.

Source: Ord. 20110210-029;Ord. No. 20141120-056, Pt. 1, 12-1-14;Ord. No. 20161110-010, Pt. 1, 11-21-16.

§ 9-2-22 PERMIT FOR SOUND EQUIPMENT ON VEHICLE.

- (A) The accountable official may issue a permit under this section for the use of sound equipment attached to or mounted on a vehicle, provided that the permit is limited to:
- (1) 10:00 a.m. and 8:00 p.m. on Monday through Saturday; or
 - (2) 12:00 noon and 6:00 p.m. on Sunday.
- (B) A permit issued under this section is valid for a 24-hour period.

Source: Ord. 20110210-029.

§ 9-2-23 PERMIT FOR OTHER PROPERTY.

A permit for the use of sound equipment not otherwise authorized by this division may be issued for a period of up to 24 hours, subject to the restrictions in Division 1 (*General Provisions*), except that a permit for an outdoor live music permit may only be issued in accordance with Division 3 (*Outdoor Music Permits*) of this article.

Source: Ord. 20110210-029.

§ 9-2-24 ADMINISTRATIVE APPEALS.

- (A) If the accountable official denies an application for a sound permit under this division, an applicant may appeal the director's decision to the city manager under the requirements of this section.
- (B) An appeal must be filed with the city manager, in writing, no later than the 10th day after the date the decision is issued and must describe the decision being appealed and the specific grounds for the appeal.
- (C) No later than the 30th day after receiving a request for an appeal, the city manager shall schedule a hearing to consider the appeal.

(D) The city manager may sustain, reverse, or modify the action appealed. The city manager's decision is final.

Source: Ord. 20110210-029.

Division 3. Outdoor Music Permits.

Subpart A. General Provisions

§ 9-2-30 DECIBEL LIMITS FOR OUTDOOR MUSIC.

- (A) 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.
- (B) 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.

Source: Ord. 20110210-029; Ord. 20110303-012; Ord. No.20180426-008, Pt. 3, 5-7-18; Ord. No.20191114-011, Pt. 1, 11-25-19.

§ 9-2-31 ADDITIONAL APPLICATION REQUIREMENTS.

- (A) The accountable official may require additional information, including a certified list of all property owners entitled to notice under Section 9-2-54 (*Notice of Application*) if ownership records are available through an automated database maintained by the county tax appraisal district.
- (B) Within 14 days after notice is provided under Section 9-2-54 (*Notice of Application*), an applicant for an outdoor music permit may voluntarily revise the application to request a permit of shorter duration. A revision under this section does not require additional notice.

Source: Ord. 20110210-029; Ord. 20111215-055; Ord. No.20191114-011, Pt. 3, 11-25-19.

§ 9-2-32 NOTICE SIGN REQUIREMENTS FOR LIVE MUSIC PERMITS.

- (A) The owner or operator of a site or property for which a permit has been issued under Section 9-2-39 (*Permit for an Outdoor Music Venue*) shall prominently post signs that include information required under Subsection (B) of this section.
- (B) The accountable official shall adopt requirements, in accordance with Chapter 1-2 (*Adoption of Rules*), governing the design, placement, and size of signs to be posted at all outdoor music venues. At a minimum, the signs shall specify the following:
 - (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; and
 - (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.

Source: Ord. 20130822-033; Ord. No. 20141106-021, Pt. 2, 11-17-14; Ord. No.20180510-018, Pt. 6, 5-21-18.

§ 9-2-33 TEMPORARY USE OF SOUND EQUIPMENT.

- (A) This section applies to the temporary use of sound equipment outdoors at an event that is not subject to City Code Chapter 4-20 (*Special Events*).
- (B) In this section, temporary use of sound equipment outdoors is the use of sound equipment on:
 - (1) any part of a premises that is not fully enclosed by permanent, solid walls, and roof; and
 - (2) four or fewer days during a 30-day period.
- (C) Except as provided in Subsection (J), a person must obtain a permit issued under this section for the temporary use of sound equipment.
- (D) Subject to the restrictions in Article 2, Divisions 1 (*General Provisions*) and 3 (*Outdoor Music Permits*), the accountable official is authorized to issue a sound permit that allows for the temporary use of sound equipment.
- (E) A sound impact plan that complies with Section 4-20-43 (*Sound Equipment for Outdoor Special Event Venues*) is required for a permit issued under this section.

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- (F) To obtain a permit issued under this section, a person must submit an application that complies with Section 9-2-12 (*Application Requirements*) at least 30 days before the beginning of the event.
 - (G) If an application for a temporary sound permit is denied, the applicant may file an appeal that complies with the requirements in Section 4-20-35 (*Appeal of Special Event Application Denial*).
 - (H) A permit issued under this section is subject to Section 4-20-61 (*Revocation of Special Event Permit*).
 - (I) The maximum number of days a premises may be the subject of a permit described in this section is 19 days per calendar year.
 - (J) In lieu of a permit described in this section, an applicant may apply for a permit authorized in Article 2, Division 3 (*Outdoor Music Permits*).

Source: Ord No. 20191114-011 , Pt. 2, 11-25-19.

Subpart B. Live Music Permits.

§ 9-2-35 APPLICABILITY.

A live music permit is required under this subpart to use sound equipment for outdoor music that involves the amplification of sound from instruments, vocal and instrument microphones, turntables, and digital or analog devices used as part of a performance requiring human operation from song to song.

Source: Ord. 20110210-029.

§§ 9-2-36—9-2-38 RESERVED.

Editor's note(s)—Ord. No. 20180510-018 , Pt. 5, effective May 21, 2018, repealed §§ 9-2-36—9-2-38, which pertained to types of live music permits; 24-hour live music permit; multi-day special events permit. See Code Comparative Table for complete derivation.

§ 9-2-39 OUTDOOR MUSIC VENUE PERMIT.

- (A) 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 this section and Divisions 1 (*General Provisions*) and 3 (*Outdoor Music Permits*) of this article.
- (B) The accountable official shall provide notice of an application under this section in accordance with Section 9-2-54 (*Notice of Application*).
- (C) A decision by the accountable official to approve or deny a permit under this section may be appealed under Section 9-2-56 (*Administrative Appeal*).

Source: Ord. 20110210-029.

§ 9-2-40 GOOD NEIGHBOR POLICY.

- (A) The purpose of the Good Neighbor Policy is to maintain the safety, quiet, and cleanliness of the area surrounding an Outdoor Music Venue.
- (B) A permit holder, as a condition of the Outdoor Music Venue permit, must comply with the requirements set forth in the Good Neighbor Policy.

(C) The Good Neighbor Policy shall be adopted by rule in accordance with Chapter 1-2 (*Adoption of Rules*).

Source: Ord. 20130822-033.

§ 9-2-41 SOUND IMPACT PLAN.

- (A) A sound impact plan is required for a permit issued under Section 9-2-39 (*Permit for an Outdoor Music Venue*).
- (B) The elements of a sound impact plan are:
- (1) sound-mitigating design features;
 - (2) prescribed decibel levels and hours of operating;
 - (3) availability and use of decibel meters on site;
 - (4) contact information and hours of availability for an individual responsible for sound;
 - (5) location for display of permit; and
 - (6) any other elements required by the accountable official.
- (C) After a permit has been issued, the accountable official may modify a sound impact plan. A sound impact plan may not be modified until a notice of intent to modify the sound impact plan has been provided to the permit holder.

Source: Ord. 20130822-033.

Subpart C. Review, Notification, and Appeal.

§ 9-2-50 MUSIC OFFICE REVIEW.

- (A) Within three days of receiving an application for an outdoor music venue permit under Section 9-2-39 (*Outdoor Music Venue Permit*), the accountable official must forward the application to the music office for review under this section.
- (B) After receiving an application from the accountable official under Subsection (A) of this section, the music office shall conduct an appropriate level of investigation based on the type of permit sought and its potential impacts to the surrounding community. The investigation may include on-site inspections and sound measurements, discussions with nearby residents and business owners, and any additional research relevant to assessing potential impacts. For an event on city parkland for which review is required under Section 8-1-41 (*Use of Sound Equipment*), the music office shall coordinate its review and investigation with the director of the Parks and Recreation Department.
- (C) After conducting an investigation under Subsection (B) of this section, the music office shall prepare a report recommending approval or denial of the application and any appropriate conditions and restrictions. If necessary to protect public health and safety, the music office may recommend heightened restrictions for one or more of the following that exceed the standards required under Section 9-2-30 (*Decibel Limits for Outdoor Music*) or other provisions of this chapter:
- (1) limits on attendance and capacity;
 - (2) decibel limits, which may include a requirement to use C-weighting in addition to standard decibel measurements; and

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- (3) hours of operation.
- (D) The music office shall base its report under Subsection (C) of this section on the following factors:
- (1) suitability of the site for outdoor music based on topography and proximity to existing and future residential, commercial, and civic uses;
 - (2) size and capacity of the site or venue covered by the permit;
 - (3) sound-mitigating design features proposed in the application, including building design, stage construction and orientation, buffering, size, location, and orientation of speakers;
 - (4) restrictions on decibel levels or hours of operation proposed by the applicant, if any, beyond those required by this chapter for the permit sought;
 - (5) ownership and operation of decibel meters;
 - (6) availability of a responsible party, as defined in Section 9-2-1 (*Definitions*), to attend and monitor outdoor music events;
 - (7) potential for additional sound mitigation; and
 - (8) history of noise complaints and violations at the site, as verified by the chief of police or the accountable official.

Source: Ord. 20110210-029;Ord. No. 20141106-021, Pt. 3, 11-17-14;Ord. No. 20141106-022, Pt. 2, 11-17-14; Ord. No.20180510-018, Pt. 6, 5-21-18.

§§ 9-2-51, 9-2-52 RESERVED.

Editor's note(s)—Ord. No. 20180510-018 , Pt. 5, effective May 21, 2018, repealed §§ 9-2-51, 9-2-52, which pertained to additional review for temporary events and temporary event impact plan. See Code Comparative Table for complete derivation.

§ 9-2-53 DECISION ON APPLICATION.

- (A) The accountable official shall approve an application under Section 9-2-39 (*Outdoor Music Venue Permit*) if:
- (1) the accountable official finds that the conditions included in the sound impact plan or other recommendation of the music office are sufficient to:
 - (a) mitigate adverse impacts of the proposed venue on adjacent residential, commercial, and civic uses; and
 - (b) protect the health and safety of residents living in areas adjacent to the proposed venue.
- (B) If the accountable official finds that an application does not meet the requirements in Subsection (A) of this section, the accountable official shall:
- (1) request that the music office reconsider its recommendation to include additional restrictions;
 - (2) approve the application subject to additional conditions and restrictions that the accountable official determines are sufficient to meet the requirements in Subsection (B) of this section; or
 - (3) deny the application.
- (C) The accountable official may not deny an initial permit for an outdoor music venue located within the footprint of a restaurant (general) use under Section 25-2-808 (*Restaurants and Cocktail Lounges*), but the accountable official may:

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- (1) impose conditions on the permit, as provided in Subsection (B)(2) of this section; and
 - (2) deny an application to renew the permit under Section 9-2-62 (*Denial of Permit for Repeated Offenses*) based on repeated violation of applicable decibel limits.
- (D) A decision under this section must:
- (1) be in writing;
 - (2) describe conditions of approval, including requirements of the temporary event impact plan; or
 - (3) be mailed to the applicant and any interested party within three days after the decision is issued, per the requirements of Section 9-2-54 (*Notice of Application*).
- (E) The accountable official may not issue a decision under this section earlier than the 14th day after the date that notice of the application is provided under Section 9-2-54 (*Notice of Application*).

Source: Ord. 20110210-029; Ord. 20121018-024; Ord. No.20191114-011, Pt. 4, 11-25-19.

§ 9-2-54 NOTICE OF APPLICATION.

- (A) Not later than the 14th day after receiving an application under Section 9-2-39 (*Permit for an Outdoor Music Venue*), the accountable official shall provide notice of the application under this section.
- (B) Except as provided in Subsection (C) of this section, the accountable official shall mail notice to:
- (a) the applicant;
 - (b) notice owner of a single-family use located within 600 feet of the site or property included in the application;
 - (c) notice owner of a multi-family use located adjacent to the site or property included in the application; and
 - (d) registered neighborhood organizations whose declared boundaries are within 600 feet of the site or property included in the application.
- (C) If the application is for renewal of an existing permit under Section 9-2-39 (*Outdoor Music Venue Permit*), the accountable official shall mail notice to:
- (1) the applicant;
 - (2) notice owner of a single-family use located within 600 feet of the property; and
 - (3) registered neighborhood organizations whose declared boundaries are within 600 feet of the site or property included in the application.
- (D) Notice required under this section must:
- (1) describe the general nature of the application;
 - (2) identify the applicant and the location of the site or property included in the application;
 - (3) describe:
 - (a) the venue and duration of proposed events;
 - (b) the size of the venue and anticipated attendance; and
 - (c) whether the sale or consumption of alcohol will be allowed at the event;
 - (4) provide contact information for the accountable official and the music office;

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- (5) state the earliest date that a decision on the application may be made; and
 - (6) describe the requirements for becoming an interested party and for appealing a decision on the application.
- (E) Notice required under this section is effective on the date a letter is deposited in a depository of the U.S. Post Office, postage paid, and addressed to:
- (1) an applicant, by mailing notice to the property owner or agent at the address shown on the application or on a written change of address form filed with the responsible director or building official;
 - (2) a notice owner of real property, by mailing notice to the owner shown on the records of the county tax appraisal district;
 - (3) a record owner of real property, by mailing notice to the owner at the street address of the property or, if the property does not have a street address, to the return address shown on the deed; and
 - (4) a neighborhood or environmental organization, by mailing notice to the agent or officer of the organization at the mailing address specified in the City's community registry.
- (F) Notice by hand delivery may be substituted for notice by mail if the addressee provides a receipt of delivery.
- (G) The accountable official shall forward notice provided under this section to appropriate City staff, including but not limited to the Austin Police Department, Special Events Unit; Transportation Department, Right of Way Management Division; and Austin Fire Department, Fire Marshall.

Source: Ord. 20110210-029; Ord. 20111215-055; Ord. No.20180510-018, Pt. 6, 5-21-18.

§ 9-2-55 INTERESTED PARTIES.

- (A) Except as provided in Subsection (B), a person is an interested party for an application requiring notice under Section 9-2-54 (*Notice of Application*) if the person:
- (1) is the applicant or the record owner of property for which the permit is sought; or
 - (2) communicates an interest in the application and is:
 - (a) an individual entitled to notice under Section 9-2-54 (*Notice of Application*); or
 - (b) a representative of a neighborhood organization entitled to notice under Section 9-2-54 (*Notice of Application*).
- (B) A person communicates an interest in a proposed outdoor music venue for purposes of Subsection (A)(2) of this section by communicating his or her concerns, in writing or by phone, to the accountable official. The communication must:
- (1) generally identify the issues of concern;
 - (2) include the person's name, telephone number, and mailing address;
 - (3) be delivered before the earliest date on which action on the application may occur under Subsection 9-2-53(G) (*Decision on Application*); and
 - (4) if the communication is by telephone, be confirmed in writing not later than seven days after the earliest date that a decision on the application can be made under Subsection 9-2-53(G) (*Decision on Application*).

Source: Ord. 20110210-029; Ord. 20121018-024.

§ 9-2-56 ADMINISTRATIVE APPEAL.

- (A) Except as provided in Subsection (E) of this section, an interested party may appeal a decision by the accountable official on an application for a permit under Section 9-2-39 (*Permit for an Outdoor Music Venue*).
- (B) An appeal under this section must be filed with the accountable official, in writing, no later than the 14th day after the date the decision is issued and must describe the decision being appealed and the specific grounds for the appeal.
- (C) Unless otherwise agreed to by the parties, a public hearing on an appeal shall be held at the earliest council meeting for which notice of the hearing can be timely provided.
- (D) At any time prior to an appeal hearing, the accountable official may revise a permit to include conditions agreed to by the parties that are within the scope of the accountable official's authority under this chapter.
- (E) In deciding an appeal, the city council may uphold, reverse, or modify a decision of the accountable official, including the requirements and conditions of a multi-day special event permit.
- (F) A neighborhood organization may not appeal a decision to approve a permit for property located within the following boundaries:
 - (1) Eastern boundary: I-35;
 - (2) Southern boundary: the northern shore of Lady Bird Lake;
 - (3) Western boundary: north along the eastern shore of Shoal Creek, north along West Avenue to 7th Street, east along 7th Street to Lavaca Boulevard, north along Lavaca Boulevard to 11th Street; and
 - (4) Northern boundary: 11th Street.

Source: Ord. 20110210-029; Ord. No.20180510-018, Pt. 6, 5-21-18.

§ 9-2-57 DENIAL OF PERMIT FOR REPEAT OFFENSES.

- (A) The accountable official may refuse to issue a permit to an applicant or to renew an existing permit if:
 - (1) The permit holder is convicted of more than two violations of a permit issued under this chapter; or
 - (2) The property where the sound equipment will be used is the location of more than two violations of a permit issued under this chapter.
- (B) The accountable official may not issue a permit to an applicant if the accountable official or, after an appeal, the city council, revoked a prior permit issued under this chapter in the preceding six months.

Source: Ord. 20130822-033.

ARTICLE 3. PENALTIES AND ENFORCEMENT.

§ 9-2-61 OFFENSES.

- (A) A person commits an offense if the person makes noise or uses sound equipment in violation of a provision of this chapter or a sound impact plan or temporary event impact plan required under this chapter.
- (B) An offense under this chapter is a Class C misdemeanor, punishable by a fine up to \$500.
- (C) A culpable mental state is not required for the commission of an offense under this chapter.

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- (D) Each occurrence of a violation of this chapter is a separate offense.
 - (E) A violation of this chapter is a nuisance. The prosecution of an offense under this chapter does not limit the City's right to abate the nuisance, including the use of injunctive relief.

Source: Ord. 20130822-033; Ord. No. 20141106-021, Pt. 5, 11-17-14.

§ 9-2-62 ENFORCEMENT POLICIES.

The police chief may adopt enforcement policies to measure sound levels under this chapter in accordance with Chapter 1-2 (*Adoption of Rules*).

Source: Ord. 20130822-033.

§ 9-2-63 SUSPENSION OF A PERMIT.

- (A) The accountable official may suspend a permit if the official determines that:
 - (1) the permit was issued in error; or
 - (2) at least four documented violations of the Sound Impact Plan have occurred within a 45-day period.
- (B) A suspension is effective for up to two weeks.

Source: Ord. 20130822-033; Ord. No. 20180510-018, Pt. 6, 5-21-18.

§ 9-2-64 REVOCATION OF A PERMIT.

- (A) The accountable official may immediately revoke a permit issued pursuant to Section 9-2-39 (*Permit for an Outdoor Music Venue*) that has been suspended if the accountable official determines that Sound Impact Plan has been violated:
 - (1) during the suspension; or
 - (2) within six months after the end of the suspension.
- (B) A permit holder may appeal a revocation not later than 10 calendar days after the date of the revocation.
- (C) A notice of appeal must be on a form prescribed by the accountable official and must include:
 - (1) the name, address, and telephone number of the appellant;
 - (2) the name, address, and telephone number of the venue; and
 - (3) the reasons the appellant believes the decision does not comply with the requirements of this chapter.
- (D) The city council shall hear the appeal at the next available scheduled meeting following seven days after the receipt of the notice of appeal.
- (E) A revocation order remains in effect during the pendency of an appeal under this section.

Source: Ord. 20130822-033; Ord. No. 20180510-018, Pt. 6, 5-21-18.

§ 9-2-65 NOTICE OF INTENT TO SUSPEND A PERMIT.

- (A) The accountable official may give notice to the permit holder of the official's intent to suspend a permit issued under Section 9-2-39 (*Permit for an Outdoor Music Venue*).

(B) The notice may include one or more of the following:

(1) proposed modifications to the sound impact plan; or

(2) the time, date, and place for a mandatory meeting between the permit holder and City personnel.

Source: Ord. 20130822-033; Ord. No.20180510-018, Pt. 6, 5-21-18.