



## PLANNING COMMISSION STUDY SESSION MEMORANDUM

TO: Planning Commission

FROM: James Lindsay, Community Development Director

MEETING DATE: July 10, 2012

SUBJECT: ZOA12-0008 - Outdoor Music

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The purpose of this study session item is to further discuss the proposal to modify regulations related to outdoor music in advance of the continued public hearing scheduled for July 25, 2012.

### **BACKGROUND**

The Planning Commission received a presentation at its June 27<sup>th</sup> meeting on a proposal to modify Articles 7-30 (Noise Control) and 15-19 (Commercial Regulations) establishing new regulations for outdoor music. After receiving public testimony on the proposal, the Commission continued the public hearing to July 25<sup>th</sup> and requested a study session on July 10<sup>th</sup> to discuss the proposal in more detail.

### **DISCUSSION**

There were a number of points which Commissioners requested clarification on, specifically, the equity of the 200 foot distance proposed between amplified music events and how background music is defined. Another was to clarify the difference between audible music that does not register on a decibel meter with the decibel levels proposed with the Outdoor Music Permit.

Attached is a revised draft ordinance (for discussion purposes) which removes the 200 foot separation as a standard requirement and gives the Community Development Director the discretion to limit the distance between events. The purpose of the change is to address some of the inequity concerns yet still prevent several outdoor music events occurring within close proximity, especially in areas with homes nearby. The revised draft also addresses background music and requires such music to comply with the ambient noise standards in Section 7-30.040, without the 8 dBA allowance provided for in Section 7-30.050(b). Excerpts from the attached draft ordinance are shown below reflecting these changes.

## Noise Ordinance

### **Outdoor Music Permit**

- (1) The Community Development Director may issue or renew a permit for up to six months allowing a business in a commercial zoning district to have music outside a building that could exceed the standards set forth in Section 7-30.050. Such permits shall be subject to the following requirements:
  - (a) All amplified outdoor music shall be limited to Fridays & Saturdays until 9:00 PM and Sundays until 7:00 PM. Acoustic music may be played until 7:00 PM Sundays through Thursdays and until 9:00 PM Fridays & Saturdays.
  - (b) The noise level shall not exceed 83dBA as measured by a sound level meter within five feet of the source of music.
  - (c) Other requirements, including limiting the distance between amplified music events, that the Director reasonably determines are necessary to protect the public health, safety or welfare.

### General Commercial Regulations:

**Live or Recorded Music.** Businesses may have amplified or acoustic music outside a building upon issuance of an Outdoor Music Permit pursuant to Section 7-30.090(b) or inside a building pursuant to Section 7-30.060(g). Music played for the purposes of providing background music in outdoor areas through permanently mounted speakers on a building or structure is permitted and must comply with the ambient noise standards set forth in Section 7-30.040.

The City's audio equipment will be set up in the courtyard outside the Saunders Room to allow the Commission an opportunity to experience different noise levels from both inside and outside the building.

### **ATTACHMENTS:**

1. Draft Ordinance
2. 6-27-12 Staff Report

*July 10, 2012 Study Session*

**PLANNING COMMISSION RECOMMENDED AMENDMENTS TO SECTIONS  
7-30.020, 7-30.060, 7-30.090, 15-19.020, AND 15-19.050  
OF THE SARATOGA CITY CODE**

The Planning Commission recommends that the Saratoga City Code be amended as set forth below. Text to be added is indicated in bold double-underlined font (e.g., **bold double-underlined**) and text to be deleted is indicated in strikeout font (e.g., ~~strikeout~~). Text in standard font is readopted by this ordinance.

A. Amendments to Chapter 7 Concerning Health and Sanitation Regulations

1. *The addition of definitions for Acoustic Music and Amplified Music*

**7-30.020 Definitions.**

For the purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them in this Section, unless the context or the provision clearly requires otherwise:

- (a) **Acoustic music means music played by instruments that are not electrically enhanced or modified to project or transmit sound through amplifiers, loudspeakers, microphones, or similar devices or combinations of devices which are intended to increase the volume, range, distance or intensity of music.**
- (ab) Ambient noise level means the composite of noise from all sources, near and far, constituting the normal or existing level of environmental noise at a given location, excluding the noise source in question.
- (c) **Amplified music means music projected or transmitted by portable electronic equipment including, but not limited to, amplifiers, loudspeakers, microphones, or similar devices or combinations of devices which are intended to increase the volume, range, distance or intensity of music. ~~Music played for the purposes of providing background music in outdoor areas through permanently mounted speakers on a building or structure is not defined as amplified music for the purposes of this Section.~~**
- (bd) Approving authority means the commission, officer or official of the City having the authority to initially approve or deny a particular type of application.
- (ce) Daytime means the twelve hour period from 7:00 A.M. to 7:00 P.M.

- (~~e~~f) **Decibel or dB** means a unit of sound of noise level equal to ten times the logarithm, with base ten, of the ratio between the acoustic energy presented at a given location and the lowest amount of acoustic energy audible to sensitive human ears.
- (~~e~~g) **Decibel A Scale or dBA** means a measure of decibels using the "A" scale or "A" weighted network of the sound level meter.
- (~~f~~h) **Evening** means the three hour period from 7:00 P.M. to 10:00 P.M.
- (~~e~~g) **Nighttime** means the nine hour period from 10:00 P.M. to 7:00 A.M. of the following day.
- (~~h~~j) **Noise level** means the maximum continuous sound level or repetitive peak level produced by a noise source or group of sources, as measured with a sound level meter.
- (~~i~~k) **Property plane** means a vertical plane located at and perpendicular to the property line which determines the property boundaries in space of the parcel over or from which the sound in questions is audibly transmitted.
- (~~j~~l) **Single event noise** means noise generated from a single source which is distinguishable from the ambient noise level.
- (~~k~~m) **Sound level meter** means an instrument comprised of a microphone, an amplifier, an output meter and frequency weighing networks, used for measuring sound levels in decibel units.

2. *Adding Outdoor Music to the list of noise exceptions for specific activities*

**7-30.060 Exceptions for specific activities.**

Exceptions for specific activities, so long as the noise level at any point twenty-five feet from the source of noise does not exceed 83 dBA, shall be permitted to exceed the standards set forth in Section 7-30.050 under the following conditions:

- (a) **Residential construction.** Residential construction, alteration or repair activities which are authorized by a valid City permit, or do not require the issuance of a City permit, may be conducted between the hours of 7:30 A.M. and 6:00 P.M. Monday through Friday and between the hours of 9:00 A.M. and 5:00 P.M. on Saturday. Residential construction shall be prohibited on Sunday and weekday holidays, with the exception of the following:
  - (1) Construction, alteration or repair activities that do not require a City permit may be conducted between the hours of 9:00 A.M. and 5:00 P.M. on Sunday and weekday holidays.
  - (2) Construction, alteration or repair activities which are authorized by a valid City permit and which do not exceed fifty percent of the existing main or accessory structure may be conducted between the hours of 9:00 A.M. and 5:00 P.M. on Sunday and weekday holidays.
  - (3) Temporary construction activities authorized by the Community Development Director upon his/her determination of an emergency.

A notice of applicable construction hour restrictions shall be posted conspicuously on site at all times for all exterior residential construction activity requiring a City permit.

- (b) **Commercial construction.** Construction, alteration or repair activities in Commercial and Professional and Administrative Office zoning districts which are authorized by a valid City permit, or do not require the issuance of a City permit, may be conducted between the hours of 7:30 A.M. and 6:00 P.M. Monday through Friday. Commercial construction shall be prohibited on Saturday, Sunday and other holidays. The Community Development Director may grant temporary exemptions upon his/her determination of an emergency.
- (c) **Subdivision construction.** Subdivision construction activities which are authorized by a valid City permit, or do not require the issuance of a City permit, may be conducted between the hours of 7:30 A.M. and 6:00 P.M. Monday through Friday. Subdivision construction shall be prohibited on Saturday, Sunday and other holidays. The Public Works Director may grant temporary exemptions upon his/her determination of an emergency.
- (d) **Garden tools.** Powered garden tools except gasoline powered leaf blowers may be utilized between the hours of 8:00 A.M. and 9:00 P.M. on Sundays through Saturdays. Gasoline powered leaf blowers may be utilized between 8:00 A.M. and 5:00 P.M. Monday through Saturday only. No gasoline powered leaf blowers shall be allowed on Sundays. The noise level of all garden tools including gasoline powered leaf blowers shall not exceed seventy-eight dBA at any point twenty-five feet from the source of noise.
- (e) **Pool and spa equipment.** Pool and spa equipment located within twenty feet of a side property line shall only be operated between the hours of 8:00 A.M. and 10:00 P.M. Noise from such equipment shall not exceed fifty dBA twenty-five feet from the source of noise.
- (f) **Set-up and cleaning of commercial establishments.** Set-up and cleaning activities conducted at restaurants and other commercial establishments located immediately adjacent to a residential area, which generate any noise audible to the occupants of the adjacent residences, including noise generated by the operation of delivery or service vehicles, shall not begin prior to one hour before the normal opening time of the establishment or extend later than one hour after the normal closing time of the establishment, or such other times as may be specified in a use permit, license, or other entitlement granted by the City for such establishment.
- (g) **Indoor Live or recorded music.** ~~Commercial establishments~~ **Businesses in commercial zoning districts may have live or recorded music played inside a building .** shall keep ~~A~~ all doors and windows **within the businesses shall be kept closed after 10:00 P.M.** ~~closed during nighttime hours~~ when live or recorded music is being played. **The noise level shall not exceed 83dBA before 10:00 P.M. or 63dBA after 10:00 P.M. as measured by a sound level meter within five feet outside the building.**

- (h) **Animals.** Noise caused by animals shall be governed by the provisions of Section 7-20.190 concerning barking dogs and Section 15-11.020(h) concerning the keeping of animals as pets.

3. *Adding "Outdoor Music Permit" as a type of noise exception permit*

**7-30.090 Exception permits.**

- (a) **General Noise Exception Permit.** If the applicant demonstrates to the satisfaction of the Planning Director that immediate compliance with the requirements of this Article would be impractical or unreasonable, the Planning Director may issue a permit to allow exception from any or all of the provisions contained in this Article, with appropriate conditions to minimize the public detriment caused by such exceptions. Any such permit shall be for an initial term as specified by the Planning Director, not to exceed thirty days. Longer terms up to one hundred twenty days may be granted by the Planning Commission.

(b) In determining whether an exception permit should be issued and the nature and scope of any conditions to be imposed, the Planning Director shall consider the following factors:

- (1) The level and intensity of the noise;
- (2) The level and intensity of the background noise, if any;
- (3) The proximity of the noise to residential areas;
- (4) The time of day when the noise occurs;
- (5) The duration of the noise, and whether it is recurrent, intermittent or constant;
- (6) The nature and zoning of the area within which the noise emanates or to which it is transmitted.

**(b) Outdoor Music Permit**

**(1) The Community Development Director may issue or renew a permit for up to six months allowing a business in a commercial zoning district to have music outside a building that could exceed the standards set forth in Section 7-30.050. Such permits shall be subject to the following requirements:**

**~~(a) No business shall have amplified music outdoors within 200 feet of another business having such music.~~**

**(a) All amplified outdoor music shall be limited to Fridays & Saturdays until 9:00 PM and Sundays until 7:00 PM. Acoustic music may be played until 7:00 PM Sundays through Thursdays and until 9:00 PM Fridays & Saturdays.**

**(b) The noise level shall not exceed 83dBA as measured by a sound level meter within five feet of the source of music.**

- (c) Other requirements, including limiting the distance between amplified music events, that the Director reasonably determines are necessary to protect the public health, safety or welfare.
- (2) Continuing Jurisdiction and Permit revocation. The Community Development Director shall retain continuing jurisdiction over each permit and may modify, delete or add conditions to, or revoke an Outdoor Music Permit to the extent the Community Development Director deems necessary to protect the public health, safety or welfare, or if the permit holder fails to meet any of the conditions of the permit or to adequately address changed circumstances.
- (3) Denial of a permit. The Community Development Director may deny an Outdoor Music Permit if the applicant has had an Outdoor Music Permit revoked within the past six months or if the applicant is not in compliance with the City Code or a use permit issued pursuant to the City Code, or on the basis of any factor identified in Subsection 7-30.060(a)(1)-(6).
- (4) Hearing and Appeal. Prior to denial, modification, or revocation of a permit, the Community Development Director shall notify the applicant in writing of the intent to deny, modify, or revoke the permit, the reasons for such intended decision, and that the applicant may within five days after receipt of such notice file with the Director a written request for a hearing before the Director. A determination of the Director to issue, deny, modify or revoke a permit may be appealed to the Planning Commission in accordance with the procedures set forth in Article 15-90 for appeals from administrative decisions and notwithstanding Section 15-90.020, the decision of the Planning Commission on the appeal shall be final and not subject to appeal to the City Council.

B. Amendments to Chapter 15 Concerning Zoning Regulations

4. *Adding "Outdoor Music" to the list of permitted uses in all commercial districts.*

**15-19.020 General regulations.**

The following general regulations shall apply to all commercial districts in the City:

- (a) **Permitted uses.** The following permitted uses shall be allowed in any commercial district, unless a use involves the operation of a business providing direct customer service (including, but not limited to, conducting a delivery service) on-site between the hours of 1:00 A.M. and 6:00 A.M., in which event such use may be allowed upon the granting of a use permit in accordance with this Code:

- (1) Retail establishments, except restaurants, markets, delicatessens, and any establishment engaged in the sale of alcoholic beverages.
- (2) Home occupations, conducted in accordance with the regulations prescribed in Article 15-40 of this Chapter.
- (3) Parking lots which comply with the standards for off-street parking facilities as set forth in Section 15-35.020 of this Chapter.
- (4) Accessory structures and uses located on the same site as a permitted use.
- (5) Antenna facilities operated by a public utility for transmitting and receiving cellular telephone and other wireless communications, subject to design review under Article 15-46

(b) **Conditional uses.** The following conditional uses may be allowed in any commercial district, upon the granting of a use permit in accordance with this Code:

- (1) Restaurants.
- (2) Markets and delicatessens.
- (3) Any establishment engaged in the sale of alcoholic beverages.
- (4) Hotels and motels.
- (5) Bed and breakfast establishments.
- (6) Institutional facilities.
- (7) Community facilities.
- (8) Game arcades.
- (9) Gasoline service stations on sites abutting Saratoga/Sunnyvale Road, Saratoga/Los Gatos Road or Saratoga Avenue and accessible directly from such arterial road; provided, that all operations except the sale of gasoline and oil shall be conducted within an enclosed structure.
- (10) Animal establishments, as defined in Section 7-20.010(c) of this Code. All animal establishments shall be subject to the regulations and license provisions set forth in Section 7-20.210 of this Code.
- (11) Public buildings and grounds.
- (12) Public utility and public service pumping stations, power stations, drainage ways and structures, storage tanks, transmission lines and cable television facilities.
- (13) Accessory structures and uses located on the same site as a conditional use.
- (14) Repealed.
- (15) Tobacco retailers. All tobacco retailers (as defined in Section 15-80.130 of this Article) shall be subject to the permitting requirements and provisions set forth in Section 15-80.130 of this Article.

(c) **Expressly prohibited uses.** Without limiting the application of Section 15-05.055(a) of this Chapter, the following uses are expressly declared to be prohibited in all commercial districts:

- (1) Any use which emits air pollutants, solid or liquid wastes, radioactivity, or other discharge which endangers human health or causes damage to animals, vegetation or property.
- (2) Any use which creates offensive odor, noise, vibration, glare or electrical disturbance, detectable beyond the boundaries of the site, or creates a hazard of fire or explosion.

- (3) Any use involving drive-through service, such as restaurants and financial institutions with drive-through windows.
  - (4) Any use involving automotive body work, such as collision repair, painting, dismantling or customizing.
  - (5) Mini-storage facilities.
  - (6) Outdoor sales or storage of motor vehicles.
- (d) **Location of building sites.** The average natural grade of the footprint underneath any structure shall not exceed thirty percent slope, and no structure shall be built upon a slope which exceeds forty percent natural slope at any location under the structure between two five-foot contour lines, except that:
- (1) A variance pursuant to Article 15-70 of this Chapter may be granted where the findings prescribed in Section 15-70.060 can be made, and
  - (2) An exception under Article 14-35 of the Subdivision Ordinance may be granted where the findings prescribed in Section 14-35.020 can be made.
- (e) **Setback area.** No use shall occupy any required setback area, except fences, walls, hedges, landscaped areas, walks, driveways and parking areas. No required setback area shall be used for a loading area or for storage.
- (f) **Screening, landscaping and fencing.**
- (1) Where a site is abutting an A, R-1, HR, R-M or P-A district, a solid wall or fence six feet in height shall be located along the property line between the two districts, except in a required front setback area, and an area five feet in depth adjoining such property line shall be landscaped and permanently maintained with plant materials suitable for ensuring privacy, screening unsightliness and insulating adjacent properties against noise.
  - (2) Open storage of materials and equipment shall be permitted only within an area surrounded and screened by a solid wall or fence (with solid gates where necessary) not less than six feet in height; provided, that no materials or equipment shall be stored to a height greater than that of the wall or fence.
  - (3) All outdoor trash containers and garbage areas shall be fully enclosed by a solid wall or fence and solid gates of sufficient height to screen the same from public view. No trash or garbage containers shall be placed or kept within twenty-five feet from the property line of any site occupied by a dwelling unit. An owner or occupant of a commercial establishment shall comply with the requirements of this subsection within sixty days after receiving a directive from the City to do so.
  - (4) Notwithstanding any other provision contained in this subsection (f), the Community Development Director or the Planning Commission may require the installation of a solid fence or wall up to eight feet in height along any property line that abuts a residential district, upon a determination that such fence or wall is necessary to mitigate noise or other adverse impacts of the commercial activity upon the residential use. In the case of an existing commercial development, such fence or wall shall be installed within sixty days after the requirement is imposed by the Community Development Director or the Planning Commission, unless a longer period of time is allowed by the Director or the Commission by reason of extenuating circumstances, including, but not limited to, the installation cost of the new fence or

wall, or the value of any existing fence or wall to be demolished, or the cost of removing any existing fence or wall. The design, color and materials of the fence or wall shall be subject to approval by the Community Development Director, based upon a finding that the design, color and materials of the fence or wall will not adversely affect contiguous properties.

- (5) Required pedestrian open spaces, front setback areas, side setback areas, and not less than fifteen percent of any parking lot area, shall be completely landscaped and permanently maintained.
  - (6) No credit shall be given against any landscaping or open space requirement imposed by this Article by reason of adjacent public parking facilities or public rights-of-way.
  - (7) Whenever screening or landscaping is required by the provisions of this Article, or as a condition of any project approval, the owner or occupant of the property shall keep and maintain such screening and landscaping in good condition and repair.
  - (8) Except as otherwise provided in this subsection (f), fences, walls and hedges shall comply with the regulations set forth in Article 15-29 of this Chapter.
- (g) **Signs.** No sign of any character shall be erected or displayed in any C district, except as permitted under the regulations set forth in Article 15-30 of this Chapter.
- (h) **Off-street parking and loading facilities.** Except in the case of a site located within and constituting a part of a City parking district, off-street parking and loading facilities shall be provided for each use on the site, in accordance with the regulations set forth in Article 15-35 of this Chapter.
- (i) **Design review.** All structures shall be subject to design review approval in accordance with the provisions of Article 15-46 of this Chapter.
- (j) **Live or Recorded Music. Businesses may have amplified or acoustic music outside a building upon issuance of an Outdoor Music Permit pursuant to Section 7-30.090(b) or inside a building pursuant to Section 7-30.060(g). Music played for the purposes of providing background music in outdoor areas through permanently mounted speakers on a building or structure is permitted and must comply with the ambient noise standards set forth in Section 7-30.040.**

End of Amendments