



Chapter 5.03 – Outdoor Amplified Sound Proposed Permit Amendments

Ellen A. Smyth, P.E.
Environmental Services

"Delivering Outstanding Services"



Conversation for Today

- Current Permit Requirements (Feb 2019)
- Why Modifications are being requested
- Proposed Modifications to Ordinance
- Expectations from Residents and Businesses
- Continued Communication



Current Permit Requirements

passed February 2019 and effective August 2019

- Permit required if outdoor area is within 350-feet of a residential property and outdoor amplified sound is emitted after 10 p.m.
- Outdoor amplified sound must cease at 12:00 a.m.
- Sound Impact Plan is required, but noise control measures are not required
- Permit may be denied if 25% or more residents within 150-feet send a written request for denial. If denied, establishment may appeal to the City Manager
- Sound may not exceed 70 dB at the establishment's property line
- Area of DMD exempt north of Paisano Dr.



Why Modifications are being Requested

- Loss of income for establishments after midnight
- Establishments are willing to install sound mitigation
- Establishments are willing to apply for extended permit
- Establishments are agreeable to 25% protest from residents within the 150-foot impact for denial of permit
- Residents concerned that only 150-foot impact are considered for permit denial—not full 350-feet
- Closer homes are more impacted. Additional consideration would require many more signatures



Current Permit Requirements for Permit Denial



Properties notified				
	Distance		Distance	
	150'	Required Number of contesting properties required to deny permit	350'	Required Number of contesting properties required to deny permit
4935 Mesa	4	2	8	3
109 Coldwell	13	4	30	8
2519 Stanton	12	4	39	10

More than 25% of notified residential property owners are required to provide written response contesting application



Amendments for Extended Hours Permit

- Permit required for ***extended hours*** if outdoor area is within 350 feet of a residential property and outdoor amplified sound is emitted ***after 12:00 a.m.***
- Outdoor amplified sound must cease at 2:00 a.m.
- Sound Impact ***Plan is required***, and noise control measures are required to be included in the plan
- Sound may not exceed 70 dB at the establishment's property line
- Effective Oct. 1, 2019 (as introduced—date needs to be a floor amendment. Possibly November 4, 2019)



Expectations

- ***Residents*** – peace and quiet to be able to sleep and enjoy their home and property, especially after 12:00 a.m.
- ***Businesses*** – the ability to fully utilize their property to earn revenue up to 2 a.m.
- ***City Council*** – balance the interests of both businesses and residents, and to address problem areas in the city
- ***City Staff*** – implement a process with defined rules and outcomes in the form of an outdoor amplified sound permit



We listened to Residents!

Concern	How Addressed
Notification radii not sufficient	Increased by 50 ft. in ordinance (300 -350)
Notifications sent by permit applicant could not be verified	City staff are responsible for sending notices and receiving public comments
Notifying only property owners not sufficient	Ordinance requires posting of permit application notice in public view at the establishment
2 a.m. for outdoor amplified sound is unacceptable. If 2 a.m. is allowed significant sound mitigation is needed	Reduced cutoff time from 2 a.m. to midnight in ordinance (approved in February 2019)



We listened to the Businesses!

Concern	How Addressed
Anonymous complainants abuse the complaint process	All complaints will be responded to, however, citations will <i>not</i> be issued for anonymous nuisance complaints
Current decibel limit (50 dB after 10 p.m.) is too low for an urban environment with business activity	Decibel limit raised to 70 dB at property line by ordinance, brings El Paso in line with the other large cities in Texas
Outdoor amplified sound cutoff at midnight harms businesses' revenue	Businesses requested amendments to allow until 2 a.m. when noise control measures are installed
Enforcement of noise violations is inconsistent	Police has adopted and publicly posted its enforcement policy; officers will be trained to enforce per the policy for consistency



We listened to City Council!

- ***Need Cross-functional Approach—Done.*** Environmental Services, Planning and Inspections, and Police continue to work as a team in communicating with businesses, implementing the permit application process and performing initial enforcement of the ordinance
- ***Need a consistent policy for enforcement—Done.*** a policy has been adopted by Police, and ESD Code and Police Officers are currently undergoing training to ensure consistent enforcement of nuisances and sound permit violations. Businesses have endorsed this new policy.
- ***Need good equipment — Done.*** Businesses, City ESD Code and Police have agreed to purchase new sound level meters for consistent enforcement



Noise Control Measures Certification

- Noise control measures ***must be certified*** by an independent third party as an effective method of controlling noise at the outdoor area.
- The certification process ***shall require testing*** of the measures in accordance with a procedure maintained by the permit official and a signed statement of completion from the independent third party verifying that the measures were properly installed or constructed and tested in accordance with the procedure.
- Noise control measures shall be documented in the establishment's ***Sound Impact Plan*** and shall be verified by a designated City inspector as being installed or constructed at the establishment.



Independent Third Party

- ***Independent third party*** means an engineer or architect that has demonstrated experience in the fields of acoustics, physics, or sound engineering and that holds a professional license in accordance with a state statute, or a consultant for professional services that holds a license or certification in a field related to acoustics or noise control from a nationally-accredited organization.



Effect on Existing Permit

- Noise control measures must first be installed ***before applying*** for an extended hours permit
- If an establishment has an existing outdoor amplified sound permit, it may apply for an extended hours permit, or cease to emit outdoor amplified sound at 12:00 a.m.
- An application for extended hours permit shall be identical in process to a standard outdoor amplified sound permit, including required public notice
- If an extended hours permit application is approved, the establishment's existing permit is superseded; if withdrawn, canceled or denied, the existing permit remains in effect



Effect on Existing Permit, cont.

- Noise control measures must be effective: using 110 dB on the outdoor space, the meter must measure no more than 70 dB (avg)
- If an establishment fails three times to meet the 70 dB requirements with control measures, the extended hours permit will be revoked, and they will need to cease to emit outdoor amplified sound at 12:00 a.m.
- The establishment may submit a compliance plan and reapply for an extended permit once the control measures are modified to achieve the required results.



Other Minor Revisions

- Permit application fee for extended hours permit will be waived until January 1, 2021
- Update to definition of “operations” to clarify that intermittent amplified sound to communicate with customers does not in itself require a permit (ensures drive thru restaurant loudspeakers do not require a permit, for example)



Continued Communication

- Following 5 public meetings for business owners this summer, staff met with the El Paso Bar and Restaurant Owners Association on several occasions to address their concerns
- As a result of these meetings, the ***association supports*** the amendments that will be presented today
- Staff worked with the association to get a map and list of all businesses that are potentially subject to needing a sound permit
- Staff have been assigned to visit each business on the list and will provide them with a comprehensive packet to assist them in navigating the permit application process
- Initial sweeps for compliance have been conducted by ESD Code and notices have been issued to those businesses determined to be in need of a sound permit



Next Steps

- Staff recommends the formation of an Ad Hoc Committee to assist staff, ***residents, and businesses*** in the continued process of better understanding the new ordinances and to provide a forum for all to voice concerns and receive status updates
- Planning and Inspections, supported by Environmental Services, will host a one-day ***permit application fair*** to allow business owners a more convenient and supportive process to apply
- The number of new permit applications ***will increase*** following the decision today by Council on the proposed amendments
- As with any new permit required by the City, the process to fully permit, make rulings on appeals, become proficient in enforcement, and have meaningful will be a continuous effort



QUESTIONS?



"Delivering Outstanding Services"