

ORDINANCE NO. 2014 - 349

AN ORDINANCE TO PERMIT THE CREATION OF HOSPITALITY DISTRICTS, TO ESTABLISH REGULATIONS FOR AMPLIFIED ENTERTAINMENT IN HOSPITALITY DISTRICTS, TO MODIFY CERTAIN NOISE REGULATIONS THAT APPLY THROUGHOUT THE CITY, AND TO CLARIFY CERTAIN PROVISIONS OF THE CITY'S AMPLIFIED ENTERTAINMENT REGULATIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RALEIGH, NORTH CAROLINA that:

Section 1. Part 12, Article D of the Raleigh City Code is amended by enacting a new section 12-2117 as follows:

“Sec. 12-2117. PERMIT REQUIRED.

All establishments located in Raleigh and providing amplified music or other *amplified entertainment shall* possess an *amplified entertainment* permit or shall comply with the requirements applicable in the *hospitality district* in which the establishment is located. Religious worship facilities and schools are exempt from the provisions of this division. Any establishment located outside a *hospitality district* and providing *amplified entertainment* four (4) or fewer times a year is also exempt from the provisions of this division.”

Section 2. Raleigh City Code Section 12-2118 is repealed in its entirety, rewritten, and reenacted as follows:

“Sec. 12-2118. DEFINITIONS.

Amplified entertainment shall mean any type of music or other entertainment delivered through and by an electronic system. Televisions operating with no amplification other than their internal speakers and background music systems operated at a *low volume* and not intended for entertainment *shall* not be deemed *amplified entertainment*.

Background music or sound shall mean amplified music or amplified sound that cannot be heard or felt outside the structure in which it is played except for

brief periods when customers enter or exit the establishment and that is played within the structure at *low volume*.

Hospitality district shall mean a district established by the City Council by ordinance that contains a concentration of establishments offering *amplified entertainment* that are located in close proximity to residential dwellings.

HDEP shall mean a *hospitality district* entertainment permit.

Low volume shall mean sound played at a level such that a person speaking in a normal tone of voice can be heard clearly over this sound by another person standing thirty-six inches (36") away.

Manager shall mean the individual responsible for the establishment's operations who is accessible to the public at all times when the establishment is open, occupied, or when employees are on site, and who possesses sufficient authority to address issues that arise at the establishment.

Non-resident neighbor shall mean any person who owns, occupies, or leases property within one-quarter ($\frac{1}{4}$) mile of the *hospitality district*.

Permittee shall mean any person possessing an *amplified entertainment* permit or a *hospitality district* entertainment permit.

Resident shall mean any person who owns, occupies, or leases property within the *hospitality district*."

Section 3. Raleigh City Code Section 12-2119(b) is repealed in its entirety, rewritten, and reenacted as follows:

"(b) Establishments holding an *amplified entertainment* permit shall not generate any sound from their structure or parking area that exceeds the decibel limits set out in §12-5003 of this Code when measured at or beyond any *property* line of the premises covered by the permit. In addition to the decibel limits set out above, no establishment shall be in violation of any of the noise restrictions found in §12-5006 and §12-5007(a), (b), and (d) through (p) of this Code. A violation of this subsection occurs when, under Part 12, Chapter 5 of this Code, any of the following occur: a civil citation is issued and not appealed or upheld on appeal by an arbitrator; a criminal conviction occurs, regardless of a later

appeal; or a finding of responsibility for an infraction occurs, regardless of a later appeal.”

Section 4. Raleigh City Code Section 12-2119(d) is amended as follows:

- (1) by inserting the phrase “or the UDO, whichever is applicable,” immediately after the phrase “Part 10 of this Code” in the first sentence of subsection (d);
- (2) by italicizing the phrase “amplified entertainment” whenever it appears in subsection (d); and
- (3) by substituting the word “if” for the word “in” in the last sentence of subsection (d).

Section 5. Raleigh City Code Section 12-2120 is repealed in its entirety, rewritten, and reenacted as follows:

“Sec. 12-2120. OUTDOOR AMPLIFIED ENTERTAINMENT.

(a) Except as otherwise permitted in this division, all amplified sound must originate within the structure housing a business which holds an *amplified entertainment* permit or an *HDEP* and *shall* not be conveyed outside the structure by any means, including but not limited to exterior loudspeakers, open windows, open doors except entrance doors when opened as needed for ingress and egress, or any other means which conveys or facilitates amplified music being conveyed from inside the confines of the building to the outside of the building. Notwithstanding any other provisions in this Code, the holder of an *amplified entertainment* permit *may* allow *amplified entertainment* to be created or conveyed outside the confines of its building under a special use permit or when within the exemptions as set out below. In addition, the holder of an *HDEP* *may* allow *amplified entertainment* for special events on the establishment’s premises not otherwise permitted in a *hospitality district* only if granted a permit by the *City Manager* or when within the exemptions as set out below:

(1) Occasional Outdoor Event Permit in Hospitality District.

The *City Manager* or designee may grant a permit allowing outdoor *amplified entertainment* at an establishment located

within a *hospitality district* when all of the following conditions are met:

- (a) The event begins no earlier than 11:00 a.m. and ends no later than 10:00 p.m.;
- (b) No more than one (1) event *may* be held at the same establishment in any calendar year;
- (c) The event does not generate noise of such character, intensity or duration as to be detrimental to the life or health of reasonable *persons* of ordinary sensibilities;
- (d) Speakers and any other noise generating equipment are oriented away from residential dwellings;
- (e) The proposed event does not conflict with other events previously scheduled in the vicinity;
- (f) The proposed event does not create an undue burden on nearby residents or other business operators because of the nature of the event or the frequency of activity in the same neighborhood previously authorized under the Special Events and Road Race Policy;
- (g) The business requesting the event has, within the last 24 months, complied with all conditions imposed on it applicable to a permit previously issued under this subsection; and
- (h) The applicant establishes that holding the event will not adversely impact public health, safety and welfare through the overcrowding of public facilities, imposing undue traffic burdens, or blocking access to other facilities.

The *City Manager* or the *City Manager's* designee *may* include conditions and safeguards in the permit that will lessen negative impacts likely to occur from the outdoor *amplified entertainment* at the event.

(2) Thoroughfare corridor.

Outdoor music *may* also be allowed outside a *hospitality district* if amplified from a point within a corridor extending three hundred (300) feet on either side of the right-of-way line of any major/minor thoroughfare, interstate, or Federal aid primary highway.

(3) Special use permit required.

Outdoor music in the area described in subsection (2) above *shall* be allowed only after the issuance of a special use permit allowing the use by the Raleigh *City Council*. Notice of any hearing pursuant to this subsection *shall* be accomplished by publishing a notice of the hearing in a newspaper qualified to convey legal advertising. The newspaper notice *shall* be augmented by a placard measuring no less than twenty-four (24) inches by eighteen (18) inches setting out the place and time of the hearing. The newspaper advertisement *shall* be published and the placard displayed at least ten (10) days prior to the hearing date. The placard *shall* remain on display from its first posting until the date of the hearing. The *City Council shall* consider the following factors when acting on a request for a special use permit to allow outdoor music:

- (a) The establishment's proximity to residential areas, schools, churches, and health care facilities.
- (b) The establishment's history of compliance with noise and nuisance laws.
- (c) Access with respect to pedestrian and automotive safety, traffic flow, emergency service.
- (d) Intensity including such considerations as size, location, hours and/or conditions of operation, and number of participants.
- (e) Landscaping, screening, fencing with respect to protecting affected properties from anticipated noise, loss of privacy, and glare; preserving of important natural features; or harmonizing the request with affected *properties*.
- (f) Control or elimination of noise, dust, vibration, and lighting.
- (g) The proposed use will not adversely impact public services and facilities such as parking, traffic, police, etc., and that the secondary effects of such uses will not adversely impact on adjacent *properties*. The secondary effects would include but not be limited to noise, light, stormwater runoff, parking, pedestrian circulation and safety.

(4) Duration of permit.

Any special use permit issued by the *City Council may* be limited in its duration and *may* contain other conditions and limitations including, but not limited to, hours of operation. An *Occasional Outdoor Event Permit* issued to the holder of an *HDEP shall* expire at the conclusion of the authorized special event. For holders of an

amplified entertainment permit, the special use permit *shall* remain in full force and effect so long as the establishment maintains a valid *amplified entertainment* permit unless the conditions of approval of the special use permit set out a different term of validity.

(5) Exemptions.

The *following* activities are exempted from the regulations controlling outdoor amplified sound:

- (a) Stadiums and arenas holding existing special use permits for their operation.
- (b) Shopping centers containing more than one hundred thousand (100,000) square feet of retail space so long as no such event continues more than seven (7) consecutive days and so long as the total number of days devoted to such events in a calendar year does not exceed twenty (20) days or four (4) weekends.
- (c) Parades and spectators and participants in parades.
- (d) Outdoor events, races, festivals or concerts on public *property* or public vehicular areas that are sponsored, cosponsored, or permitted by the *City*.”

Section 6. Raleigh City Code Section 12-2122(a) is amended by italicizing the word “Manager” in the second sentence of that subsection.

Section 7. Raleigh City Code Section 12-2123 is repealed in its entirety, rewritten, and reenacted as follows:

“Sec. 12-2123. ADDITIONAL PROHIBITIONS.

The use or possession of controlled substances, alcohol or ABC law violations and acts of violence on the premises or in parking areas provided by the *permittee* for patrons of its establishment are prohibited. Violation of any of these conditions is punishable according to the schedule of fines, penalties and suspensions set out in §12-2124.”

Section 8. Raleigh City Code Section 12-2124 is repealed in its entirety, rewritten, and reenacted as follows:

“Sec. 12-2124. PENALTIES.

(a) Violations of any of the provisions of this division will result in the *following* civil penalties:

- (1) First offense in any twelve-*month* period\$500.00
- (2) Second offense in any twelve-*month* period\$1,000.00
- (3) Third offense in any twelve-*month* period\$5,000.00
- (4) Fourth offense in any twelve-*month* periodOne year suspension

Any Police Officer *may* issue a notice of violation assessing civil penalties under this section for a violation of any of the provisions of this division. The City Manager or his designee *shall* issue a notice of hearing to suspend or revoke a permit.

- (b) A violation that occurs or continues three (3) or more hours after an earlier violation *shall* constitute a new violation punishable as a separate offense.
- (c) Upon the issuance of a written notice of a first, second, or third violation, the holder of the amplified entertainment permit *shall* have fifteen (15) calendar days to provide a written appeal of the notice and to provide additional written or electronic materials in support of the appeal to the City Manager or his designee. The *permittee may* review the evidence that is the basis of the violation during the City's normal business hours. The City Manager or his designee *shall* review any additional information provided and *shall* issue a written decision determining whether a violation has occurred.
- (d) A hearing *shall* be held at the office of the City Manager or his designee prior to the suspension or revocation of an *HDEP, amplified entertainment permit, or permit allowing outdoor amplified entertainment*. The *permittee* shall have the opportunity to question witnesses, present evidence, and *may* be represented by an attorney. Upon termination of the hearing, an Order *shall* be issued by the City Manager or his designee, which *shall* include Findings of Fact and Conclusions of Law.
- (e) An appeal *may* be made to the *City Council* within twenty-one (21) calendar days after the City Manager's decision (or the decision of his designee) was mailed to the *permittee*. The scope of the *City Council's*

review *shall* be limited to verifying the facts supporting a written decision or Findings of Fact made on a suspension. If the *City Council* finds that the facts as found are correct, the civil penalty or suspension *shall* not be disturbed.

- (f) If a *person* fails to pay any civil penalty within thirty (30) days after the decision becomes final, the City may recover the penalty, together with all costs allowed by law, by filing a civil action in the General Court of Justice in the nature of a suit to collect a debt.
- (g) In addition to civil penalties and permit suspension, a violation of this division is a misdemeanor and *may* also be enforced through injunctive or other equitable relief, or a combination of remedies.”

Section 9. Raleigh City Code Section 12-2125 is repealed in its entirety, rewritten, and reenacted as follows:

“Sec. 12-2125. RESERVED.”

Section 10. Raleigh City Code Sections 12-2126 through 12-2130, previously designated as RESERVED, are rewritten, and reenacted as follows:

“Sec. 12-2126. ESTABLISHMENT OF HOSPITALITY DISTRICTS.

The City Council *may* designate one or more *hospitality districts* that contains a concentration of establishments offering *amplified entertainment* located in close proximity to residential dwellings. Any such district *shall* be created by ordinance duly enacted after a public hearing. Notice of the public hearing *shall* be published once at least ten (10) days before the date of the hearing.

**Sec. 12-2127. HOSPITALITY DISTRICT ENTERTAINMENT PERMIT
REQUIRED.**

No permit is required for an establishment located within a *hospitality district* to provide only *background music or sound*. Establishments located within a *hospitality district* that provide or permit any other type of *amplified entertainment* at the establishment *shall* obtain a *hospitality district* entertainment permit (*HDEP*).

Sec. 12-2128. ISSUANCE OF HOSPITALITY DISTRICT ENTERTAINMENT PERMIT.

- (a) On the effective date of an ordinance creating a *hospitality district, amplified entertainment* permits for establishments located within that *hospitality district shall* automatically convert to *HDEPs* and all provisions applicable to *HDEPs shall* thereafter apply. Holders of converted *HDEPs shall* provide the contact information required under section 12-2129(a) within seven (7) calendar days after conversion.
- (b) An *HDEP* for a new establishment *shall* be issued by the Chief Financial Officer or his designee upon verification by the Inspections Department and the Fire Department that all relevant code and safety to life requirements have been met. The permit *shall* be applied for on a form supplied by the Chief Financial Officer or his designee. The application *shall* contain:
- a. The name of the business owner;
 - b. The name of the *permittee's manager*;
 - c. The name of the registered agent for service of process; and
 - d. Such other information as the chief financial officer or his designee *may* deem relevant and appropriate.

Upon receipt of the application, the Chief Financial Officer or his designee *shall* forward a copy of the same to the Inspections Department for verification of the zoning and building code requirements necessary for the issuance of a license.

- (c) Any change in the ownership of a business after the issuance of the *HDEP shall* cause the permit to be immediately invalid and require the new owner to reapply for the permit. A change in ownership *shall* mean acquisition of more than ten percent of the stock in a publicly traded corporation, any change in the ownership of shares in a privately held corporation, sale of all or part of a sole proprietorship, or any change in the membership of any form of limited liability organization.
- (d) *HDEP permittees* shall notify the City when business operations cease. If business operations cease at the establishment for thirty (30) calendar days or longer, the *HDEP shall* automatically expire.

- (e) The fee for an initial *HDEP shall* be five hundred dollars (\$500.00). Each *HDEP shall* be renewed annually and the renewal fee *shall* be one hundred dollars (\$100.00).
- (f) Anyone denied an *HDEP may* appeal within thirty (30) days of denial to the Raleigh City Council. In reviewing appeal of a denial, the Council *shall* consider the *following* criteria:
 - (1) The accuracy of the Chief Financial Officer or his designee's factual determination;
 - (2) The number and type of police calls within a three-block area within the past six (6) *months* and the relationship of the calls to the establishment holding the permit;
 - (3) The zoning classification of surrounding *properties*;
 - (4) The status of any previously issued permits.

If, after a review of the foregoing factors, any adverse conditions exist on any one (1) of the factors, the appeal will not be allowed.

Sec. 12-2129. REQUIREMENTS FOR HOSPITALITY DISTRICT ENTERTAINMENT PERMIT.

- (a) *HDEP permittees shall* provide to the City the name, telephone numbers, and e-mail addresses of the *persons* responsible for operation of the establishment, including the *manager*. The City shall publish the *manager's* name, numbers, and addresses in a manner in which they are available to the public. *HDEP* holders *shall* provide updated information so that the *manager* is accessible to the public at all times when the establishment is open, occupied, or when employees are on site.
- (b) From 2:00 a.m. until 7:00 a.m., no *HDEP permittee shall* cause or allow *amplified entertainment* that can be heard or felt outside the establishment in which it is played. In addition, from 2:00 a.m. until 7:00 a.m. no *amplified entertainment shall* be played on any outdoor portion of the establishment, including decks, patios, and permitted outdoor dining areas.
- (c) No *HDEP permittee shall* cause or allow *amplified entertainment* within the *hospitality district* that exceeds the following maximum noise limitations during the following days and times:
 - 60db(A) Sunday through Thursday from 7:00 a.m. until 11:00 p.m.
 - 55db(A) Sunday through Thursday from 11:00 p.m. until 7:00 a.m.
 - 60db(A) Friday through Saturday from 7:00 a.m. until 2:00 a.m.

Measurements shall be taken in accordance with section 12-5002 of the City Code. Ten (10) readings above the allowed decibel limits attributed to the sound source or sources shall constitute prima facie evidence of a violation. The sound meter operator may cease taking readings as soon as the readings already taken show a violation. It shall not be necessary to complete all one hundred (100) readings if a fewer number have already indicated a violation of the ordinance.

(d) Except as otherwise provided in this section, *HDEP permittees shall* comply with limitations on sound set out in section 12-2119(c), 12-5006, and 12-5007(a), (b), and (d) through (p). For purposes of this subsection, a violation of section 12-5006 or 12-5007 occurs when, under Part 12, Chapter 5 of this Code, any of the following occur: a civil citation is issued and not appealed or upheld on appeal by an arbitrator; a criminal conviction occurs, regardless of a later appeal; or a finding of responsibility for an infraction occurs, regardless of a later appeal.

(e) *HDEP permittees may* keep doors or windows of the establishment open when playing *amplified entertainment* only during the following days and times:

Sunday through Thursday from 11:00 a.m. until 11:00 p.m.
Friday and Saturday from 11:00 a.m. until 2:00 a.m.

(f) *HDEP permittees may* utilize exterior speakers playing at *low volume* through a separate volume controlled system during the following days and times:

On any day from 11:00 a.m. through 11:00 p.m.
On Friday or Saturday from 11:00 p.m. until 2:00 a.m. through private patio speakers facing inwards only.

(g) *HDEP permittees shall* make the *manager* available to interact with *residents* and with *non-resident neighbors* concerning the establishment's operations whenever the establishment is open, occupied, or employees are on site. *Residents* or *non-resident neighbors* may utilize the public contact information made available by the City to contact the *manager* directly if any *amplified entertainment* is causing a disturbance. Repeated failure of the *manager* to speak with or otherwise respond to *residents* or *non-resident neighbors* within a reasonable time after a phone call that occurs when the establishment is open, occupied, or when employees are on site *shall* constitute a violation of this section. For purposes of this subsection, a failure is repeated when it occurs on three (3) or more days in any calendar month.

- (h) If requested to do so by the Chief of Police or the Chief's designee, *HDEP permittees should* engage in mediation with *residents* or with non-resident *neighbors*. *Residents*, or non-resident *neighbors* may decline to participate in mediation; however, willingness to participate in mediation on the part of the *permittee* is a requirement of issuance of an HDEP. To the extent possible, mediation *shall* be conducted in accordance with the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions. Unless the parties to mediation otherwise agree and pay the costs of mediation, the Chief of Police or the Chief's designee shall appoint a mediator to conduct the mediation.
- (i) The City shall establish a complaint registration system for complaints related to any *HDEP permittee*, and shall make this information available to the public.
- (j) Every holder of an *HDEP shall* provide the required number of off-street parking spaces required in Part 10 of this Code or of the UDO, whichever applies, for the zoning district in which the establishment is located. All *HDEP* off-street parking areas and all *HDEP* establishment *property* abutting a public right-of-way *shall* be cleaned of all litter by 7:30 a.m. each morning. All off-street parking areas *shall* be lighted. Such illumination *shall* be a minimum average of two (2) maintained foot-candles.

The holder of an *HDEP shall* provide at least one (1) uniformed sworn law enforcement *officer* or at least one (1) uniformed security guard furnished by a company licensed to provide security by the State of North Carolina continuously present in the parking area between 9:00 p.m. and until one (1) hour after closing to provide security and supervision of the parking area. Any establishment that has maintained a nine (9) month history of safe and effective operation *shall* be exempt from the security requirement. Safe and effective operation means that the establishment, either inside or in its parking area or lot, has had less than two (2) custodial arrests for felony drug offenses; less than seven (7) custodial arrests for misdemeanor drug offenses; less than two (2) custodial arrests for acts of violence; or no custodial arrests for acts of violence involving a deadly weapon. The persons arrested must be patrons of the establishment or on their way into or out of the establishment before the arrest limits will apply. For purposes of this ordinance a custodial arrest means a physical arrest that result in a finding of probable cause by a magistrate or judge. The *City Manager* will implement a system within the *City* administration to monitor such arrests and probable cause determinations. The safe and efficient requirement *shall* be retroactive

to January 1, 2005. Any establishment that becomes subject to the security requirement can become exempt again if it operates in a safe and efficient manner for nine (9) months from the time it is placed into the program. No security will be required on days when the establishment is not providing *amplified entertainment*. Any establishment that applies for and receives a new *HDEP* after the effective date of this ordinance will be presumed to be a safe and efficient operator and will not be required to implement the security requirement until it fails to meet the safety requirements of this section. The security requirement will be waived if the establishment presents satisfactory evidence to the *City* showing that the parking area is leased from a third party who maintains personnel at the lot or deck or garage at all times during the establishment's hours of operation and that the personnel on duty have a wireless phone, radio, land line phone or other communications device capable of calling the 911 emergency number.

Sec. 12-2130. TERMINATION OR AMENDMENT OF A *HOSPITALITY DISTRICT*.

The City Council *may* amend, revise, or terminate any *hospitality district* by ordinance duly enacted after a public hearing. Notice of the public hearing *shall* be published once at least ten (10) days before the date of the hearing. Any *HDEP* issued to an establishment that is no longer within a *hospitality district* as a result of an amendment, revision, or termination shall automatically convert to an *amplified entertainment* permit as of the ordinance's effective date and all provisions applicable to *amplified entertainment* permits *shall* thereafter apply."

Section 11. Raleigh City Code Section 12-5001 is amended by removing the phrase "of any person" contained in the definition of Unnecessary noise and replacing it with the phrase "of reasonable *persons* of ordinary sensibilities".

Section 12. Raleigh City Code Section 12-5006 is repealed in its entirety, rewritten, and reenacted as follows:

"Sec. 12-5006. - UNLAWFUL NOISE.

In addition to any other violation of this Code, it *shall* be unlawful to emit, or to cause or permit to be made, any unreasonably loud, annoying, frightening, loud and disturbing or *unnecessary noise*. Specifically, it *shall* be unlawful to emit noise of such character, intensity or duration as to be detrimental to the life or health of reasonable *persons* of ordinary sensibilities.

Factors to consider in determining whether a violation exists include, but are not limited to:

- a) The volume of the noise;
- b) The intensity of the noise;
- c) Whether the nature of the noise is usual or unusual;
- d) Whether the origin of the noise is natural or unnatural;
- e) The volume and intensity of the background noise, if any;
- f) The proximity of the noise to residential sleeping facilities;
- g) The nature and zoning of the area within which the noise emanates;
- h) The density of the inhabitation of the area within which the noise emanates;
- i) The time of the day or night the noise occurs;
- j) The duration of the noise; and,
- k) Whether the noise is recurrent, intermittent, or constant.”

Section 13. All laws and clauses of laws in conflict herewith are hereby repealed to the extent of said conflict.

Section 14. If this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to this end the provisions of this ordinance are declared to be severable.

Section 15. This ordinance shall be enforced as provided in N.C.G.S. 160A-175 or as provided in the Raleigh City Code. All criminal sanctions shall be the maximum allowed by law notwithstanding the fifty dollar limit in G.S. 14-4(a) or similar limitations.

Section 16. This ordinance shall become effective five days following its adoption.

ADOPTED: October 7, 2014

EFFECTIVE: October 12, 2014

**DISTRIBUTION: Department Heads
 Special Events**

This ordinance prepared by the Raleigh City Attorney's Office