

City of Fayetteville Staff Review Form

2019-6573

Legistar File ID

3/29/2019

City Council Meeting Date - Agenda Item Only  
N/A for Non-Agenda Item

Garner Stoll

4/16/2019

CITY PLANNING (630)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

RZN 19-6573: Rezone (509 W. PRAIRIE ST./PRAIRIE ST. LIVE, 523): Submitted by JASON WRIGHT for property located at 509 W. PRAIRIE ST. The property is zoned DG, DOWNTOWN GENERAL and contains approximately 0.93 acres. The request is to rezone the property to MSC, MAIN STREET/CENTER.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? NA

Current Budget \$ -

Funds Obligated \$ -

Current Balance \$ -

Does item have a cost? No

Item Cost

Budget Adjustment Attached? NA

Budget Adjustment

Remaining Budget \$ -

V20180321

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



**MEETING OF APRIL 16, 2019**

**TO:** Mayor, Fayetteville City Council

**THRU:** Don Marr, Chief of Staff  
Garner Stoll, Development Services Director  
Andrew Garner, Planning Director

**FROM:** Jonathan Curth, Senior Planner

**DATE:** March 29, 2019

**SUBJECT: RZN 19-6573: Rezone (509 W. PRAIRIE ST./PRAIRIE ST. LIVE, 523):**  
Submitted by JASON WRIGHT for property located at 509 W. PRAIRIE ST. The property is zoned DG, DOWNTOWN GENERAL and contains approximately 0.93 acres. The request is to rezone the property to MSC, MAIN STREET/CENTER.

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**RECOMMENDATION:**

The Planning Commission and staff recommend approval of an ordinance to rezone the subject property to MSC, Main Street/Center, as shown in the attached Exhibits 'A' and 'B'.

**BACKGROUND:**

The subject property is on the southeast corner of Gregg Avenue and Prairie Street, with the Frisco Trail bordering its eastern boundary. The property is developed with one approximately 1,700 square foot industrial building built in 1930 and multiple accessory structures, including one that has the appearance of a stage. Although formerly a part of Fayetteville's downtown industrial area, it has since transitioned, first to a skating shop and park, and now to an events venue. The property was rezoned to its current DG, Downtown General, zoning district as a part of the Downtown Master Plan on October of 2006.

*Request:* The request is to rezone the subject property from DG, Downtown General, to MSC, Main Street/Center. The applicant has stated in their request letter that this rezoning is necessary to facilitate the use of the property as an events venue. MSC allows outdoor music establishments as a conditional use subject to Planning Commission approval.

*Land Use Compatibility:* A rezoning to MSC will allow for residential and commercial development that is generally comparable to other housing and businesses in the vicinity. Furthermore, while the MSC zoning district allows for commercial activities of greater intensity than the existing DG designation, the property's location in close proximity to major transportation corridors, both vehicular and nonmotorized, will direct traffic and its impacts away from nearby residential areas.

*Land Use Plan Analysis:* The Downtown Master Plan led to the current zoning that was approved by City Council with the support of many Downtown residents. This zoning seeks to segue development intensity from the Mill District into the surrounding neighborhoods. Additionally, the

five-story height limitation of the existing DG zoning district complements the R-O and DG districts across the adjacent streets.

**DISCUSSION:**

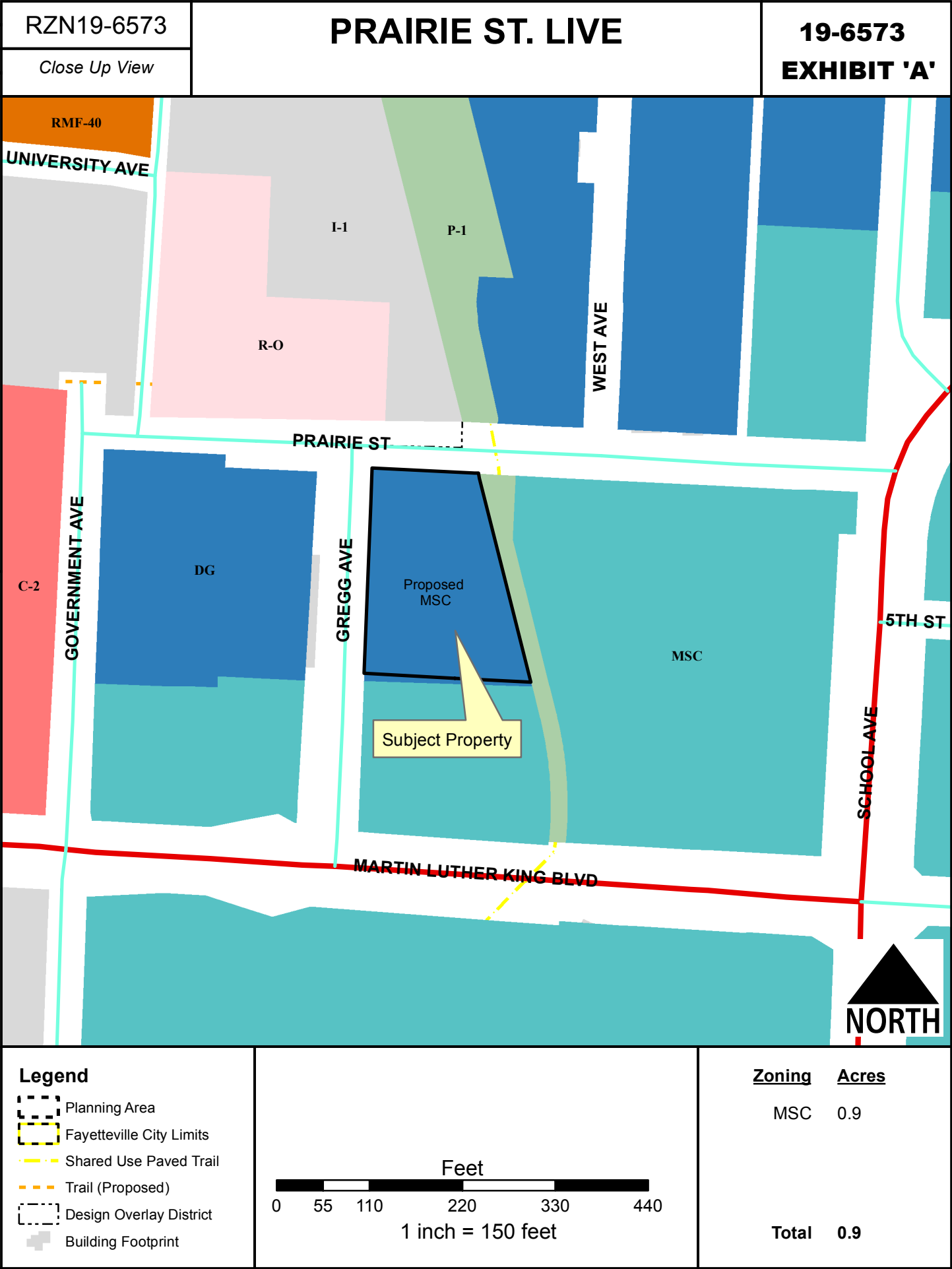
On March 25, 2019, the Planning Commission forwarded the proposal to City Council with a recommendation for approval by a vote of 8-0-0. No public comment was made.

**BUDGET/STAFF IMPACT:**

N/A

**Attachments:**

- Exhibit A
- Exhibit B
- Planning Commission Staff Report



**19-6573**  
**EXHIBIT 'B'**

**Legal Description Per Warranty Deed:**

All of Lots numbered Twenty (20), Twenty-one (21), Twenty-two (22), Twenty-three (23) and Twenty-four (24) in Block Numbered Twenty-one (21) of Ferguson's Addition to the City of Fayetteville, Arkansas; also that part of triangular Lot Numbered One (1) in said Block numbered Twenty-one (21) of Ferguson's Addition to the City of Fayetteville, described as beginning at a point on the West boundary line of said Lot Numbered One (1) which is due East of the South line of Lot numbered Twenty (20) aforesaid, and running thence East to the East line of said Lot numbered One (1), thence in a Northwesterly direction with the East line of said Lot to a point which is due East of the North point of said Lot numbered One (1), thence South along the West line of said Lot Numbered One (1) to the point of beginning. Also, all that portion of a vacated alleyway adjoining the East side of Lots 20, 21, 22, 23 & 24 of said Block Numbered Twenty-one (21) of said Addition. Also all that portion of a vacated alleyway or unnamed street that lies East and adjacent to the above-described property.



**TO:** Fayetteville Planning Commission

**THRU:** Andrew Garner, City Planning Director

**FROM:** Jonathan Curth, Senior Planner

**MEETING DATE:** March 25, 2019 (**Updated with Planning Commission Results**)

**SUBJECT:** **RZN 19-6573: Rezone (509 W. PRAIRIE ST./PRAIRIE ST. LIVE, 523):**  
Submitted by JASON WRIGHT for property located at 509 W. PRAIRIE ST. The property is zoned DG, DOWNTOWN GENERAL and contains approximately 0.93 acres. The request is to rezone the property to MSC, MAIN STREET/CENTER.

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**RECOMMENDATION:**

Staff recommends forwarding **RZN 19-6573** to City Council with a recommendation of approval based on the findings contained in this report.

**RECOMMENDED MOTION:**

"I move to forward **RZN 19-6573** to City Council with a recommendation for approval."

**BACKGROUND:**

The subject property is on the southeast corner of Gregg Avenue and Prairie Street, with the Frisco Trail bordering its eastern boundary. The property is developed with one approximately 1,700 square foot industrial building built in 1930 and multiple accessory structures, including one that has the appearance of a stage. Although formerly a part of Fayetteville's downtown industrial area, it has since transitioned, first to a skating shop and park, and now to an events venue. The property was rezoned to its current DG, Downtown General, zoning district as a part of the Downtown Master Plan on October of 2006. Surrounding land use and zoning is provided on *Table 1*.

**Table 1**  
**Surrounding Land Use and Zoning**

Direction	Land Use	Zoning
North	Single-family Residential	R-O, Residential Office; I-1, Heavy Commercial and Light Industrial (currently under zoning amendment consideration)
South	Warehousing/Commercial	MSC, Main Street/Center
East	Mixed-use Residential-Office-Retail	MSC, Main Street/Center
West	Warehousing/Commercial	DG, Downtown General

*Request:* The request is to rezone the subject property from DG, Downtown General, to MSC, Main Street/Center. The applicant has stated in their request letter that this rezoning is necessary to facilitate the use of the property as an events venue. MSC allows outdoor music establishments as a conditional use subject to Planning Commission approval.

*Public Comment:* Staff has received no public comment regarding the request.

## INFRASTRUCTURE:

**Streets:** The subject property has access to both West Prairie Street and South Gregg Avenue, both of which are classified as ST 45 streets in association with the Downtown Master Plan. Neither street is fully improved, with open ditches along the parcel's frontage, no sidewalks, and no curb or gutter. Any street improvements required in this area will be determined at the time of development proposal.

**Water:** Public water is available to the site. A 6-inch water main runs along the north side of Prairie Street.

**Sewer:** Public sanitary sewer is available to the site. An 8-inch sanitary sewer main runs along the south side of Prairie Street.

**Drainage:** Any additional improvements or requirements for drainage would be determined at the time of development. No portion of the subject property lies within a FEMA designated 100-year floodplain, a Streamside Protection Zone, or the Hillside-Hilltop Overlay District (HHOD). Hydric soils are present on this site and a wetland evaluation may be required at the time of development proposal to ensure compliance with state and federal guidelines.

**Fire:** The Fire Department did not express any concerns with this request.

**Police:** The Police Department did not express any concerns with this request.

*CITY PLAN 2025 FUTURE LAND USE PLAN: City Plan 2030 Future Land Use Plan designates the subject property as a part of a **Complete Neighborhood Plan Area** associated with the Fayetteville Downtown Master Plan.*

## FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

**Finding:** ***Land Use Compatibility:*** A rezoning to MSC will allow for residential and commercial development that is generally comparable to other housing and businesses in the vicinity. Furthermore, while the MSC zoning district allows for commercial activities of greater intensity than the existing DG designation, the property's location in close proximity to major transportation corridors, both vehicular and nonmotorized, will direct traffic and its impacts away from nearby residential areas.

***Land Use Plan Analysis:*** The Downtown Master Plan led to the current zoning that was approved by City Council with the support of many Downtown residents. This zoning seeks to segue development intensity from the Mill District into the surrounding neighborhoods. Additionally, the five-story height limitation of the existing DG zoning district complements the R-O and DG districts across the adjacent streets.

That said, this area of the Downtown Master Plan has experienced significant change in recent years, with the concentration of dwellings and services increasing in the Mill District, named for its history and remaining architectural vernacular. The Downtown Master Plan recognizes and encourages this explicitly with a stated goal to reinvest in the southern gateway to Downtown. Staff finds that one of the most effective means to do this is to set the zoning and land use framework that will accommodate further growth in a pattern that complements the existing area. The MSC zoning district can accomplish this as it has to the southwest and support further transition from underutilized and vacant industrial properties to uses that contribute to the streetscape. Furthermore, staff finds that the Downtown Illustrative Plan (attached) indicates development on this site that is more in-line with the MSC district than the existing DG district, including a significant street edge of buildings.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

**Finding:** The applicant has requested the zoning change to allow for development of the property that is compatible with adjacent land uses. Staff generally agrees with this assertion, recognizing that this portion of Prairie Street has gradually transitioned since the adoption of the Downtown Master Plan in to a node of multi-use activity. Rezoning the property to MSC will permit land uses that are complementary to the area's existing development pattern and the direction in to which it is headed.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

**Finding:** This proposal is not expected to increase traffic danger or congestion to a significant degree over the existing zoning. Future development will be subject to City street design and access management standards. The property's close proximity to a major trail and two principal arterials, School Avenue and Martin Luther King Boulevard, will direct traffic towards major corridors rather than in to nearby established neighborhoods.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

**Finding:** Despite a lack of density limitations under the MSC zoning districts, the size of the property will restrict density on the site to a degree that staff contends will not adversely impact school, water, sewer, or service capacities. Additionally, the site has direct access to existing water and sewer mains, limiting the need for additional extension or upgrade.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:



- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
- b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

**Finding:** N/A

**RECOMMENDATION:** Planning staff recommends forwarding RZN 19-6573 to the City Council with a recommendation for approval.

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**PLANNING COMMISSION ACTION:** Required YES

**Date:** March 25, 2019      ☐ Tabled      ☒ Forwarded      ☐ Denied

**Motion:** Belden

**Second:** Johnson

**Vote:** 8-0-0

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**BUDGET/STAFF IMPACT:**

None

**Attachments:**

- Unified Development Code:
  - §161.27 – Main Street/Center
  - §161. 28 - DG, Downtown General
- Request letter
- Downtown Illustrated Plan Exhibit
- One Mile Map
- Close-up Map
- Current Land Use Map
- Future Land Use Map

## 161.27 - Main Street/Center

(A) *Purpose.* A greater range of uses is expected and encouraged in the Main Street/Center. The Center is more spatially compact and is more likely to have some attached buildings than Downtown General or Neighborhood Conservation. Multi-story buildings in the Center are well-suited to accommodate a mix of uses, such as apartments or offices above shops. Lofts, live/work units, and buildings designed for changing uses over time are appropriate for the Main Street/Center. The Center is within walking distance of the surrounding, primarily residential areas. For the purposes of Chapter 96: Noise Control, the Main Street/Center district is a commercial zone.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three (3) and four (4) family dwellings
Unit 13	Eating places
Unit 14	Hotel, motel, and amusement facilities
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 19	Commercial recreation, small sites
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 34	Liquor stores
Unit 41	Accessory dwellings
Unit 44	Cluster Housing Development
Unit 45	Small scale production

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 28	Center for collecting recyclable materials
Unit 29	Dance halls
Unit 35	Outdoor music establishments

Unit 36	Wireless communication facilities
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density* . None.

(D) *Bulk and Area Regulations* .

(1) *Lot Width Minimum*.

Dwelling (all unit types)	18 feet
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(2) *Lot Area Minimum*. None.

(E) *Setback Regulations* .

Front	A build-to zone that is located between the front property line and a line 25 feet from the front property line.
Side	None
Rear	5 feet
Rear, from center line of an alley	12 feet

(F) *Minimum Buildable Street Frontage* . 75% of lot width.

(G) *Building Height Regulations*.

Building Height Maximum	5 stories/7 stories*
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\* A building or a portion of a building that is located between 0 and 15 feet from the front property line or any master street plan right-of-way line shall have a maximum height of five (5) stories. A building or a portion of a building that is located greater than 15 feet from the master street plan right-of-way line shall have a maximum height of seven (7) stories.

## 161.28 - Downtown General

- (A) *Purpose.* Downtown General is a flexible zone, and it is not limited to the concentrated mix of uses found in the Downtown Core or Main Street/Center. Downtown General includes properties in the neighborhood that are not categorized as identifiable centers, yet are more intense in use than Neighborhood Conservation. There is a mixture of single-family homes, rowhouses, apartments, and live/work units. Activities include a flexible and dynamic range of uses, from public open spaces to less intense residential development and businesses. For the purposes of Chapter 96: Noise Control, the Downtown General district is a residential zone.

(B) *Uses.*

(1) *Permitted Uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three (3) and four (4) family dwellings
Unit 13	Eating places
Unit 15	Neighborhood shopping goods
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 41	Accessory dwellings
Unit 44	Cluster Housing Development
Unit 45	Small scale production

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 14	Hotel, motel and amusement services
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 19	Commercial recreation, small sites
Unit 28	Center for collecting recyclable materials
Unit 36	Wireless communication facilities
Unit 40	Sidewalk Cafes

- (C) *Density.* None.

(D) *Bulk and Area Regulations.*

(1) *Lot Width Minimum.*

Dwelling (all unit types)	18 feet
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(2) *Lot Area Minimum.* None.

(E) *Setback Regulations .*

Front	A build-to zone that is located between the front property line and a line 25 feet from the front property line.
Side	None
Rear	5 feet
Rear, from center line of an alley	12 feet

(F) *Minimum Buildable Street Frontage .* 50% of lot width.

(G) *Building Height Regulations.*

Building Height Maximum	5 stories
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April Lee  
509 W Prairie St  
Fayetteville, AR 72701



Rezoning Application for Parcel 765-05520-000  
Legal Description: E PT LOT 1, LOTS 20 TO 24 BLOCK 21

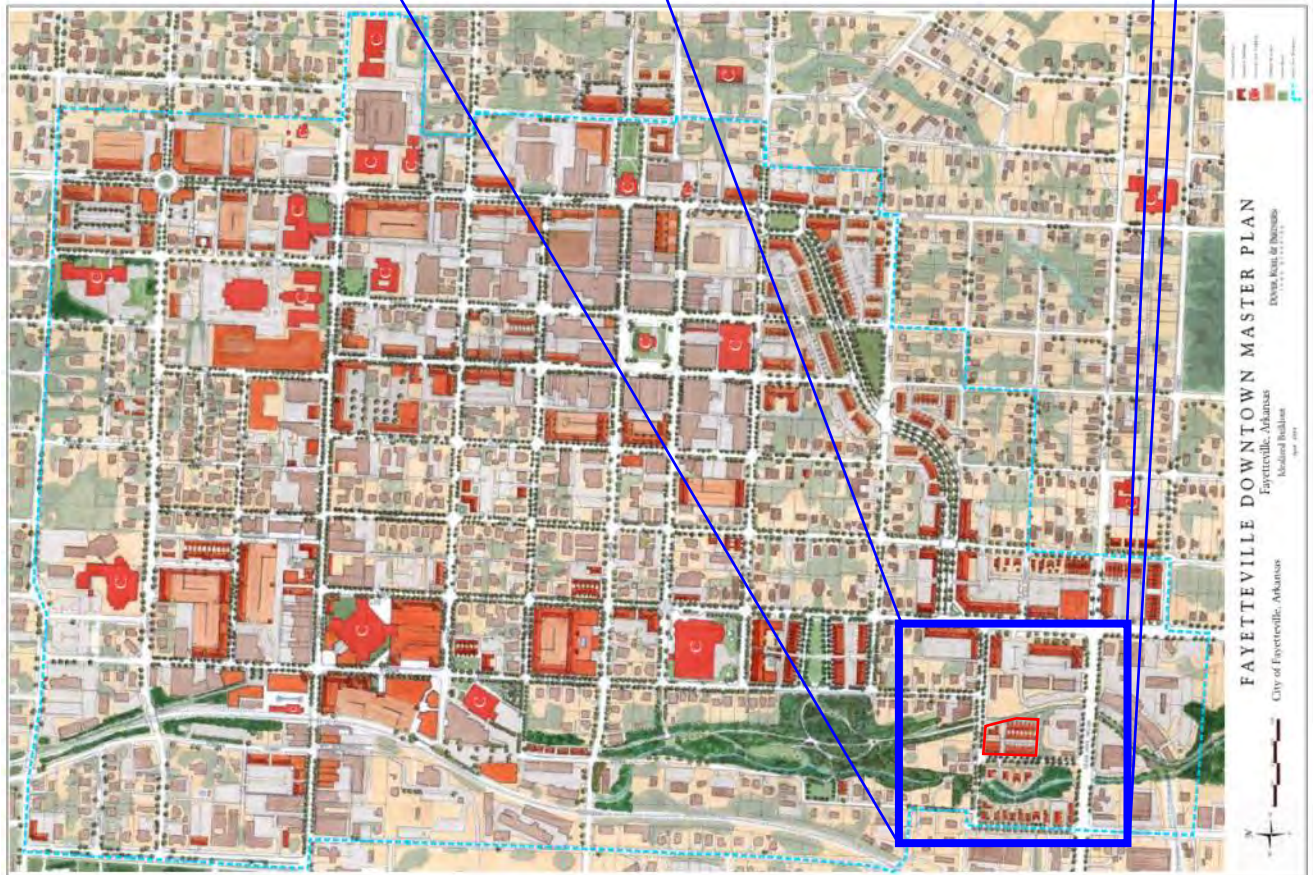
To Whom It May Concern:

I would like to formally request the rezoning of parcel 765-05520-000 from Downtown General to Main Street Central. The purpose of this rezoning is to align the zoning designation of the property with the current and historical use of the property. For years past the property was successfully, and without complaint, utilized as both an interior and exterior event venue, with the latter not technically being allowed in the current Downtown General, even as a conditional use. This historical use (formally) the Skate Station in the mid 1980's through the early 2000's held summer music events. I believe changing the existing Downtown General to Main Street Central would address the inability to hold outdoor music events in a legal manner, as well as mesh with the neighboring lots to the east, south, and southwest.

April Lee  
479.236.2404

RZN 19-6573

# Downtown Illustrated Plan Exhibit



Prairie St.

Martin Luther King Blvd.

Subject Property



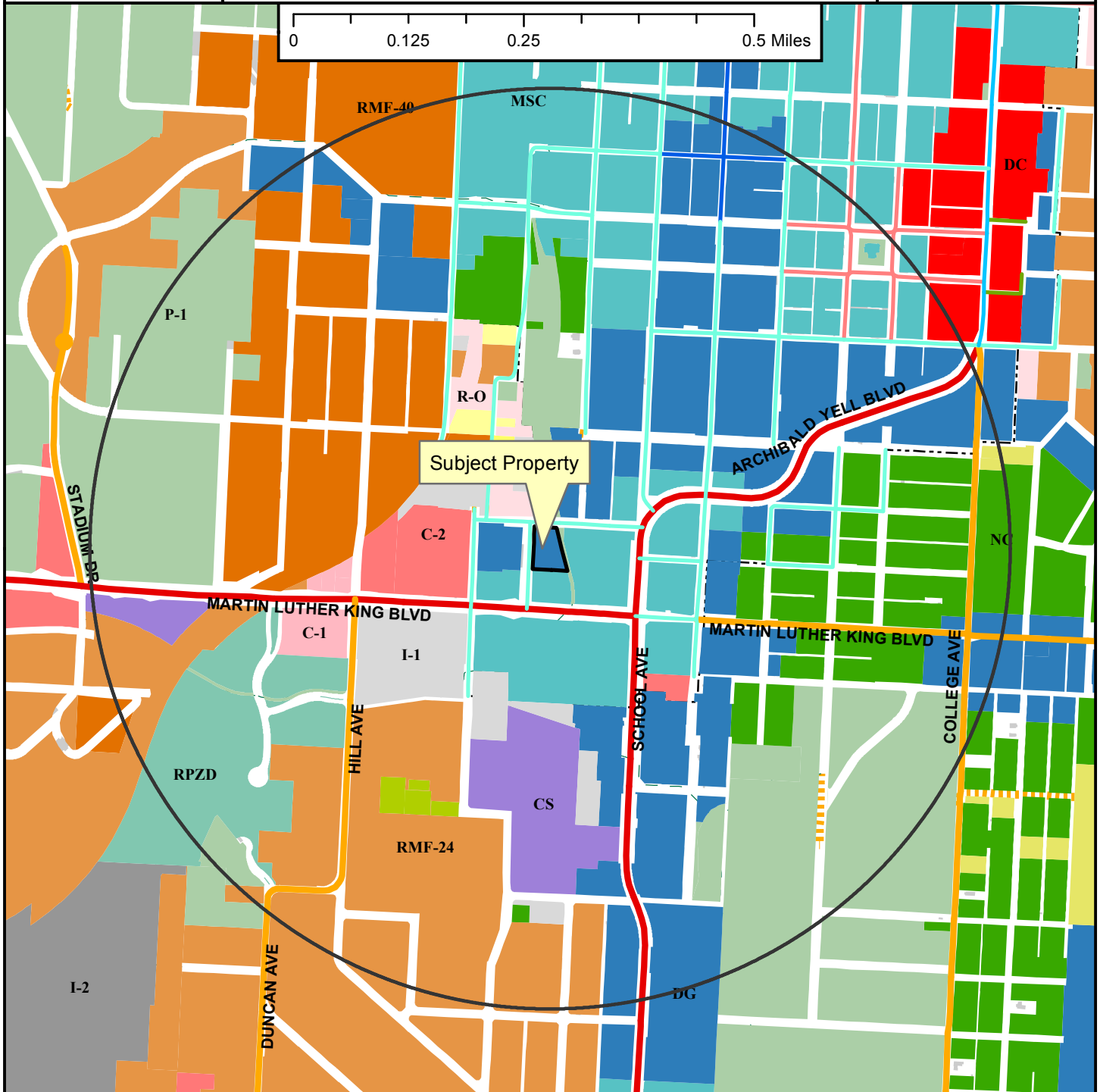
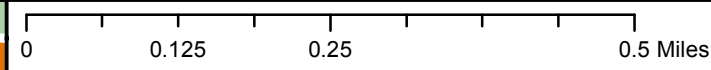


RZN19-6573

# PRAIRIE ST. LIVE

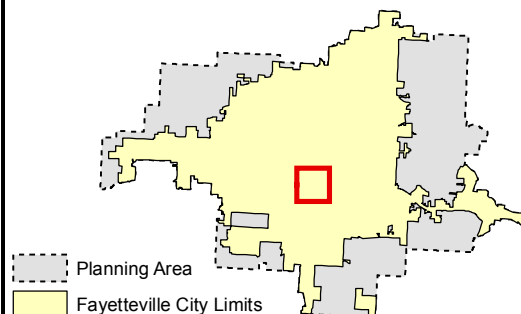


One Mile View



## Legend

- Planning Area
- Fayetteville City Limits
- Shared Use Paved Trail
- Trail (Proposed)
- Design Overlay District
- Building Footprint



- |                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Zoning</b><br><b>RESIDENTIAL SINGLE-FAMILY</b><br>RSF-5<br>RSF-1<br>RSF-2<br>RSF-4<br>RSF-7<br>RSF-8<br>RSF-18<br><b>RESIDENTIAL MULTI-FAMILY</b><br>RT-12 Residential Two and Three-family<br>RMF-6<br>RMF-12<br>RMF-18<br>RMF-24<br>RMF-40<br><b>INDUSTRIAL</b><br>I-1 Heavy Commercial and Light Industrial<br>I-2 General Industrial | <b>EXTRACTION</b><br>E-1<br><b>COMMERCIAL</b><br>Residential-Office<br>C-1<br>C-2<br>C-3<br><b>FORM BASED DISTRICTS</b><br>Downtown Core<br>Urban Thoroughfare<br>Main Street Center<br>Downtown General<br>Community Services<br>Neighborhood Services<br>Neighborhood Conservation<br><b>PLANNED ZONING DISTRICTS</b><br>Commercial, Industrial, Residential<br><b>INSTITUTIONAL</b><br>P-1 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|





Legend		Zoning	Acres
Planning Area		MSC	0.9
Fayetteville City Limits			
Shared Use Paved Trail			
Trail (Proposed)			
Design Overlay District			
Building Footprint			
<div> <div>055110220330440</div> <div>Feet</div> <div>1 inch = 150 feet</div> </div>		<b>Total</b>	<b>0.9</b>

RZN19-6573

Current Land Use

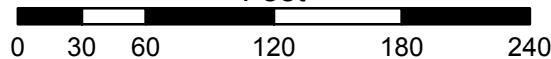
# PRAIRIE ST. LIVE



## Streets Existing MSP Class

- PRINCIPAL ARTERIAL
- - - - Trail (Proposed)
- Planning Area
- Fayetteville City Limits
- Design Overlay District

Feet



1 inch = 90 feet

## FEMA Flood Hazard Data

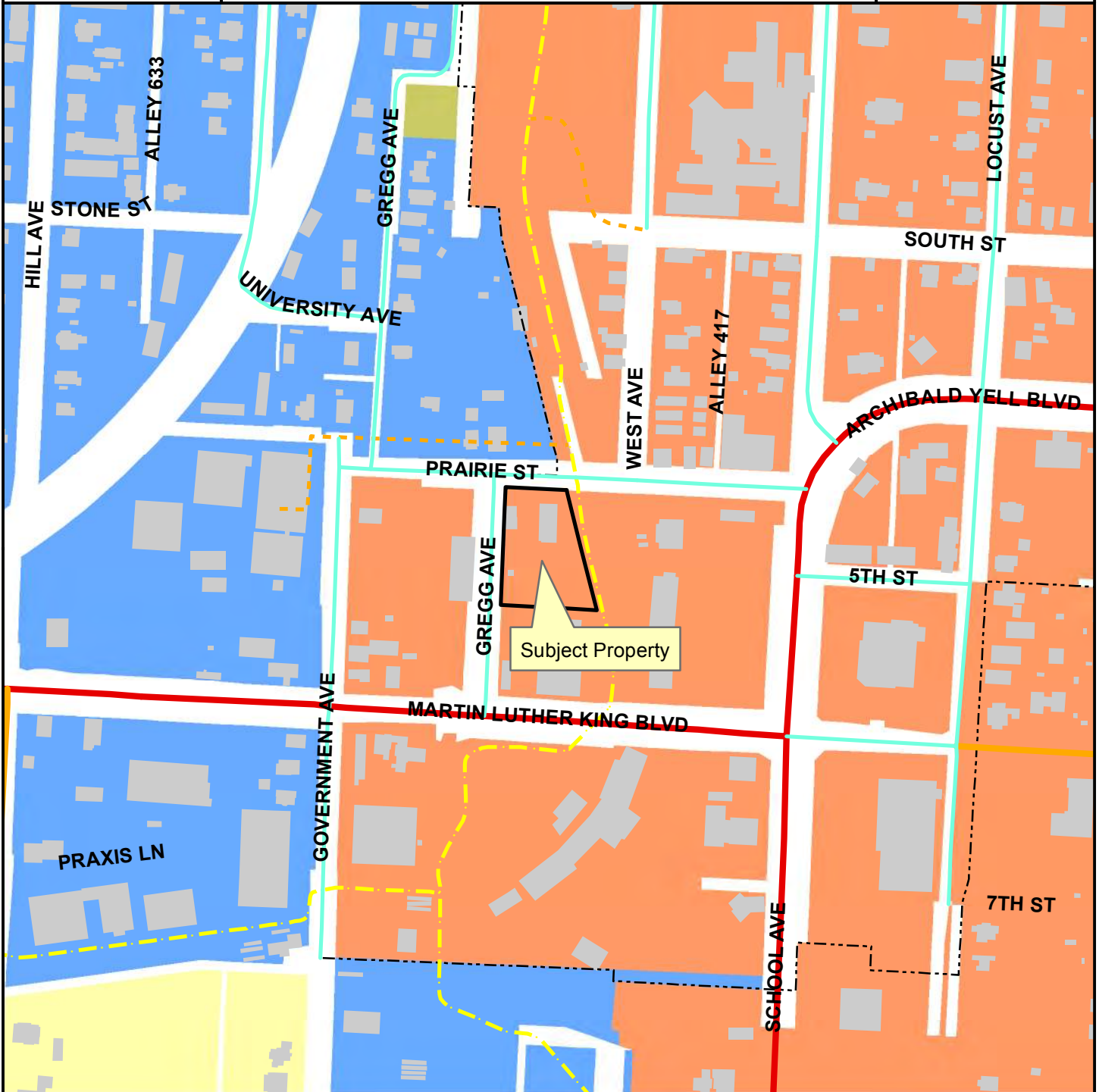
- 100-Year Floodplain
- Floodway



RZN19-6573

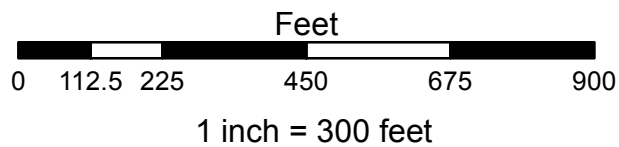
Future Land Use

# PRAIRIE ST. LIVE



## Legend

- Planning Area
- Fayetteville City Limits
- Shared Use Paved Trail
- Trail (Proposed)
- Design Overlay District
- Building Footprint



## FUTURE LAND USE 2030

- Residential Neighborhood Area
- City Neighborhood Area
- Complete Neighborhood Plan
- Civic and Private Open Space/Parks



## CITY COUNCIL AGENDA MEMO

### MEETING OF MAY 21, 2019

**TO:** Mayor, Fayetteville City Council

**THRU:** Don Marr, Chief of Staff

**FROM:** Garner Stoll, Development Services Director  
Andrew Garner, City Planning Director

**DATE:** May 16, 2019

**SUBJECT:** *Outdoor Music in the MSC, Main Street/Center Zoning District*

**RZN 19-6573: Rezone (509 W. PRAIRIE ST./PRAIRIE ST. LIVE, 523):** Submitted by JASON WRIGHT for property located at 509 W. PRAIRIE ST. The property is zoned DG, DOWNTOWN GENERAL and contains approximately 0.93 acres. The request is to rezone the property to MSC, MAIN STREET/CENTER.

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### Outdoor Music in Fayetteville's Zoning Code

The subject property is proposed to be rezoned to MSC, Main Street/Center. The applicant has indicated that the reason for the rezoning is to hold outdoor music events on the property.

Fayetteville Unified Development Code (UDC) Chapter 162 classifies an outdoor music venue as *Use Unit 35, Outdoor Music Establishments*. *Use Unit 35* is listed as a conditional use in the MSC zoning district. This means that it is not a use by right but is only allowed if the Planning Commission approves a conditional use permit. In addition to the typical conditional use permit requirements for compatibility, Chapter 163.10 has specific criteria that must be met before the Planning Commission may approve an outdoor music venue. These criteria are intended to mitigate noise impacts to surrounding property owners and give broad discretion for the commission to require noise reducing measures/structures and other measures as determined to lessen or eliminate any adverse effects upon nearby residents and businesses.

Chapter 151 of the UDC defines outdoor music establishments:

*Outdoor music establishment. (Zoning)* Any business or establishment that has a garden, patio, rooftop or premises not wholly enclosed by solid walls and fully roofed in which amplified or loud music is played that could be audible at nearby residences or businesses.

### Discussion

A conditional use permit for an outdoor music establishment is subject to review and approval at a Planning Commission meeting. This is approximately a 40-day review process where the applicant and staff work on the application materials prior to being presented at the public meeting. The application materials staff and the Planning Commission typically require include a site plan

showing the layout of the entire property, the location of the outdoor music venue, the direction that the speakers will point, a parking plan, a detailed description of the types and frequency of music events, the number of patrons estimated to be in attendance, number of employees, and hours of operation. This information is essential to determine the potential impacts and resulting conditions to place upon the permit to ensure that it will be compatible with the surrounding residents and businesses.

For the subject property, a primary concern for an outdoor music venue includes the proximity of residents in the immediate vicinity. If the noise levels are not managed appropriately, a noise venue on this site could cause a significant nuisance to residents. Additionally, given the somewhat substandard surrounding street infrastructure, major street improvements may be needed to accommodate large numbers of vehicles or on-street parking along the project site. To address these issues, staff would likely be recommending that if a permit is granted, it be for a small music venue for up to a couple hundred people. Additionally, the hours of operation will need to be limited to minimize nighttime disturbance when residents are home. Finally, an outdoor music venue on this site will need to put together a well thought out parking plan with either parking onsite, or pre-approved shared parking agreements off-site. If the commission would choose to approve a permit in this location, staff would likely recommend a phased project approach where a permit would be issued for a temporary timeframe for small-scale events to allow the community to test whether it would be appropriate in this location as a more permanent venue.

The Walton Family Foundation has funded a study to determine how best to promote the music industry in Northwest Arkansas. They have retained a consultant team to assist in the completion of the study which recommends adopting an “agent of change” policy similar to the policies used by Austin, Texas and elsewhere:

“Another best practice for Fayetteville would be establishing music-specific regulations or Special Event Permits in the Entertainment District and other Downtown areas, so live music events benefit from specific exemptions or policies (e.g., extended noise curfew on weekends, streamlined licensing, an ["Agent of Change"](#) policy, special funding for activities, etc.).” (see attached document from Victoria, Australia).

While Fayetteville has not adopted a formal “agent of change” policy, our Conditional Use Permit can serve as an effective tool to address the impacts of the introduction of live music into established neighborhoods in a manner as suggested by a more formal “agent of change” policy.

### **Public Notice**

Prior to the Planning Commission meeting, public notice is required by posting a sign on the property and mailing letters to property owners. Most conditional use permits only require notification to immediately adjoining property owners, however, because of the potential noise impacts, letters are required to be mailed to all property owners within 500 feet of the property for an outdoor music venue.

### **Conclusion**

There is potential for an outdoor music venue to cause problems at this site, however, the conditional use permit process is an excellent tool to review and vet the project and mitigate negative impacts. This could be a great location for an outdoor music venue bookending the cultural arts corridor, connecting downtown and south Fayetteville along the Razorback Greenway and staff recommends approval of the rezoning request.

**Attachments:**

- UDC: §161.27- Main Street/Center,  
§162- Use Unit 35, Outdoor Music Establishment  
§163.10- Use Conditions for Outdoor Music Establishment
- “Agent of Change” Document

**Fayetteville Unified Development Code****161.27 - Main Street/Center**

(A) *Purpose.* A greater range of uses is expected and encouraged in the Main Street/Center. The Center is more spatially compact and is more likely to have some attached buildings than Downtown General or Neighborhood Conservation. Multi-story buildings in the Center are well-suited to accommodate a mix of uses, such as apartments or offices above shops. Lofts, live/work units, and buildings designed for changing uses over time are appropriate for the Main Street/Center. The Center is within walking distance of the surrounding, primarily residential areas. For the purposes of Chapter 96: Noise Control, the Main Street/Center district is a commercial zone.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three (3) and four (4) family dwellings
Unit 13	Eating places
Unit 14	Hotel, motel, and amusement facilities
Unit 16	Shopping goods
Unit 17	Transportation trades and services

Unit 19	Commercial recreation, small sites
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 34	Liquor stores
Unit 41	Accessory dwellings
Unit 44	Cluster Housing Development
Unit 45	Small scale production

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 28	Center for collecting recyclable materials
Unit 29	Dance halls
Unit 35	Outdoor music establishments
Unit 36	Wireless communication facilities

Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density* . None.

(D) *Bulk and Area Regulations* .

(1) *Lot Width Minimum*.

Dwelling (all unit types)	18 feet
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(2) *Lot Area Minimum*. None.

(E) *Setback Regulations* .

Front	A build-to zone that is located between the front property line and a line 25 feet from the front property line.
Side	None
Rear	5 feet
Rear, from center line of an alley	12 feet

(F) *Minimum Buildable Street Frontage* . 75% of lot width.

(G) *Building Height Regulations*.

Building Height Maximum	5 stories/7 stories*
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\* A building or a portion of a building that is located between 0 and 15 feet from the front property line or any master street plan right-of-way line shall have a maximum height of five (5) stories. A building or a portion of a building that is located greater than 15 feet from the master street plan right-of-way line shall have a maximum height of seven (7) stories.

## Chapter 162 Use Units

(JJ) *Unit 35. Outdoor music establishments.* \*

(1) *Description*. Unit 35 includes any business or establishment that has a garden, patio, rooftop or premises not wholly enclosed by solid walls and fully roofed in which amplified or loud music

is played that could be audible at nearby residences or businesses.

(2) *Included Uses*.

Outdoor music establishments \*

## 163.10 - Outdoor Music Establishments

Outdoor music establishments operating during May or June of 2002 may continue to operate at the same location without this conditional use even if the ownership or name of the outdoor music establishment changes in the future as long as the establishment does not terminate its outdoor music for twelve (12) consecutive months or longer. All other outdoor music establishments may be allowed as conditional uses where they are permitted subject to the following additional conditions:

(A) *Site Plan*. A site plan showing the proposed location and size of the outdoor music area; location and direction of the speakers; noise absorbing walls, structures or devices; proposed days and hours of operation of the outdoor music area; and measures proposed to lessen or eliminate any adverse effects upon nearby residences and businesses.

(B) *Planning Commission Review*. In addition to all normal considerations for a conditional use, the Planning Commission may require noise reducing measures and structures be incorporated into an outdoor music area, may limit the size, power, number and direction of speakers, and may limit the hours of outdoor music generation from the establishment.

(C) *Fayetteville Noise Ordinance Violation*. If the establishment or any band or any person operating at such establishment is convicted of violating the Fayetteville noise ordinance (§96.06 of the *Code of Fayetteville*), such violation may constitute grounds for revocation of this conditional use to operate an outdoor music establishment.

(D) *Fayetteville Entertainment District*. The City Council's policy is to encourage outdoor music establishments along Dickson Street from Block Avenue to Arkansas Avenue and on West Avenue from Spring Street to Lafayette Street as long as such

establishments are reasonably compatible with adjoining neighborhoods.



## How To: Agent of Change

On 4 September 2014, the Victorian state government introduced the 'agent of change' principle into planning law by way of **Planning Scheme Amendment VC120** and **Clause 52.43**.

The new provisions impose obligations on the 'agent of change', for example a residential developer, with respect to noise from live music performance across Victoria and aims to protect live music venues from residential encroachment. The agent of change principle requires a developer to include noise attenuation measures when a proposed residential development is within 50m of an existing live music performance venue. In practical terms, this means that **a new residential planning proposal** close to a live music venue **will need to include appropriate** noise attenuation measures. Similarly, if a **live music venue seeks to expand, the owner/operator will be responsible** for attenuating any noise effects that are caused by that change.

The 'agent of change' principle is triggered automatically when a new planning permit application is lodged and is unprecedented planning reform for live music.

[Live Music and Entertainment Noise Planning Practice Note 81 \(Updated May 2016\)](#)

# Live Music and Entertainment Noise

Planning Practice Note | 81

MAY 2016

This practice note gives guidance about the operation of Clause 52.43 – Live Music and Entertainment Noise

Live music is an important part of the state's rich culture. Melbourne has a long established and highly regarded live music scene, making it the leading music city in Australia. Live music makes a significant contribution to the state's economy, drawing visitors from near and far and provides vital opportunities for emerging and established local musicians.

Settlement trends, particularly in inner urban areas, are increasing the level of residential development in mixed use environments. While this creates more efficient and vibrant communities, close proximity between residential and entertainment uses can sometimes cause conflict about noise emissions.

A balanced approach is essential to support the viability of our valued live music entertainment scene and to ensure *live music entertainment venues* co-exist amicably with their residential neighbours. Planning seeks to achieve a balance between supporting live music and protecting residents from unreasonable noise disturbance.

## Managing noise in the planning system

Clause 13.04-1 of the State Planning Policy Framework in the *Victoria Planning Provisions* sets out the overarching policy basis for planning decisions about noise:

### **'Objective**

*To assist the control of noise effects on sensitive land uses.*

### **Strategy**

*Ensure that development is not prejudiced and community amenity is not reduced by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area'.*

Everybody living and working in an area has a role in maintaining a healthy level of noise amenity for that area, including taking responsibility for their own noise outputs or sensitivities. While a new use or development should include design measures to minimise noise impacts, existing residents and venues should also take action to prevent noise conflict.

This can mean ongoing compliance with noise-related planning permit conditions or it can mean simple measures such as cooperation between neighbours to manage noise attenuation with practical responses like residents or venues closing windows or doors at noisy or late times. However, noise management is not always straightforward.

## Clause 52.43 – Live Music and Entertainment Noise

Clause 52.43 applies to a planning permit application for a *live music entertainment venue* or a *noise sensitive residential use* within 50 metres of a live music entertainment venue.

In this clause, live music entertainment venue means:

- a food and drink premises, nightclub, function centre or residential hotel that includes live music entertainment
- a rehearsal studio
- any other venue used for the performance of music and specified in clause 2.0 of the schedule to this clause, subject to any specified condition or limitation

Noise sensitive residential use means:

- a boarding house, dependent person's unit, dwelling, nursing home, residential aged care facility, residential village or retirement village.

This clause does not apply to:

- the extension of an existing dwelling
- a *noise sensitive residential use* that is in an area specified in clause 1.0 of the schedule to this clause.

The schedule to Clause 52.43 can be used to specify:

- areas to which Clause 52.43 does not apply: this may be necessary where alternative noise control requirements are already in place for a *noise sensitive residential use* through the planning scheme or SEPP N-2
- other venues to which Clause 52.43 applies.

Where a different venue may warrant the same protection as the defined venues, clause 2.0 of the schedule can include the venue. For example, a public hall or similar venue that is regularly used for the performance of live music.

## The agent of change principle

The agent of change principle has been introduced into Clause 52.43 to manage the relationship between live music venues and residential uses.

In planning, the agent of change principle assigns responsibility for noise attenuation measures to the 'agent of change' – a new use or development that is introduced into an existing environment.

In practical terms this means that if a new or an existing live music venue seeks to establish or expand, they will be responsible for attenuating any noise effects that are caused by that change on nearby residential properties.

Similarly, a new residential development close to an existing live music venue will be responsible for noise attenuation of its building to protect future residents from the live music venue.

This does not mean however that any other person living or working in an area is free of any responsibility for noise management.

Everyone has a role in noise management, including existing permit holders and live music entertainment venues who must ensure they comply with *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2* (SEPP N-2) and any relevant permits or other obligations.

## Information to be submitted with an application

Clause 52.43-3 sets out what information needs to be submitted with an application and the requirements for noise attenuation:

- A permit application for a *live music entertainment venue* must be designed, constructed and managed to minimise noise emissions from the premises and provide noise control measures that will protect a *noise sensitive residential use* within 50 metres of the venue.
- A permit application for a *noise sensitive residential use* must be designed and constructed to include noise control measures that will reduce noise levels from any:
  - indoor *live music entertainment venue* (including an outdoor space of a substantially indoor venue) to below the noise limits specified in SEPP N-2

- outdoor *live music entertainment venue* (a public premises where music is played in the open air, such as a major sports and recreation facility) to below 45 dB(A), assessed as an Leq over 15 minutes.

An applicant must ensure the application is accompanied by the information required in Clause 52.43-4 or any alternative requirements of the council.

## Meeting the requirements

Normally, the requirements of Clause 52.43-3 must be met. However, a council may reduce or waive these requirements if it is satisfied that an alternative measure meets the purpose of the clause.

In some instances, the most practical and effective outcome will involve treatment to both the noise making and noise receiving premises.

This allows for alternative approaches such as a residential developer improving the noise attenuation in the venue as an alternative to, or in combination with, attenuation measures in the proposed residential development. In some situations, this may be more cost effective than undertaking noise attenuation of multiple new dwellings.

It also provides for a residential or venue developer to implement established building and urban design techniques for noise attenuation without commissioning a detailed acoustic assessment, where the council considers this approach is warranted.

Some techniques used to address music noise can be easy to achieve and be low-cost. These measures can also result in other benefits. For example installing insulation, sealing draughts and effective window coverings will not only help address noise, but will also reduce the need for supplementary cooling or heating and will provide passive energy gains. Attenuating against music noise will also help address other noise nuisances such as waste collection and traffic noise.

While SEPP N-2 does not prescribe noise limits for noise associated with the arrival and departure of people attending the premises, an applicant should still identify how they propose to manage the behaviour of patrons coming and going from the venue so that nuisance impacts on neighbours are minimised. This information can be explained in a venue management plan.

## ATTENUATING A LIVE MUSIC VENUE

One or more of the following measures may be considered to help achieve the requirements of Clause 52.43, as appropriate:

- implementing a venue management plan focussed on minimising noise
- positioning entertainment rooms, the stage and loudspeakers to increase the distance between the noise source and any *noise sensitive residential use*
- orienting the stage or loudspeakers of external entertainment spaces to direct noise away from any *noise sensitive residential use*
- incorporating measures such as acoustic glazing, wall, ceiling and roof construction
- sealing gaps, joints and service penetrations and using acoustic insulation
- using setbacks and acoustic fencing
- limiting noise leakage through the use of vestibule / sound-lock entry arrangements
- installing a sound limiter to cap the volume of any amplified sound to an appropriate level.

While all of the above measures will be helpful, some may have a limited overall effect on noise emissions in different circumstances. An acoustic engineer can advise on measures that are capable of achieving the requirements of Clause 52.43.

## ATTENUATING A NOISE SENSITIVE RESIDENTIAL USE

Measures that may help meet the requirements of Clause 52.43 include:

- locating noise-sensitive rooms (particularly bedrooms) away from significant noise exposure by using spaces like walkways, laundries and storage as a buffer
- using acoustic glazing, wall, ceiling and roof construction
- sealing gaps, joints and service penetrations and using acoustic insulation
- using setbacks and acoustic fencing
- using a noise masking system (for example by relying on heating, ventilation or air-conditioning noise).

## Understanding the noise limits specified in Clause 52.43-3

The Australian Standard for Acoustics – Recommended Design Sound Levels and Reverberation Times for Building Interiors – AS 2107:2000 (AS2107) recommends noise limits such as 40dB(A)Leq for bedrooms in dwellings near major roads. Noise limits typically ranging from 35dB(A)Leq to 45dB(A)Leq are often specified in local planning scheme provisions and permit conditions for new dwellings in locations with a high level of external noise. While these measures may be suitable in some environments, they do not properly address music noise.

The AS2107 Standard is primarily intended to be applied to steady noise sources, such as road traffic and mechanical plant noise. This standardised measure does not acknowledge that music noise presents variable noise characteristics – specifically low frequency and rhythmic qualities that can interrupt sleep.

The SEPP N-2 noise standards were developed specifically to protect residents from potential music noise impacts. The policy recognises that music noise can have a more significant effect on residents than other urban noises.

It prescribes separate noise limits for the late evening period and for the night period for an indoor venue, taking into consideration the particular characteristics of music noise which need to be assessed differently to more broadband noise sources. The standards in Clause 52.43-3 for a *noise sensitive residential use* are based on the SEPP N-2 model, but with an adjusted measurement point.

The normal SEPP N-2 standards are applied to a new or modified *live music entertainment venue* to help achieve the Clause 52.43 requirement.

The 45dB(A)Leq specified for outdoor venues in Clause 52.43-3 is equivalent to the standard in place for the Docklands Scheduled Area in SEPP N-2.

SEPP N-2 – Schedule B1, which generally specifies an outdoor measurement point, does not apply in Clause 52.43. The measurement point is modified in Clause 52.43 to allow noise to be measured inside a habitable room of a *noise sensitive residential use*, with the windows and doors closed.

This approach protects the amenity of residents inside, when windows and external doors are closed.

## Is a professional acoustic assessment always required?

A report from a suitably qualified acoustic engineer will normally be required with an application. The report should detail recommended mechanisms to mitigate noise impacts and should verify that the proposed mitigation measures will be satisfactory to meet Clause 52.43-3.

To avoid imposing the cost burden of a professional acoustic assessment (to demonstrate compliance with Clause 52.43-3) on small residential developments or for minor changes to an existing live music venue, a council could also consider requiring established design measures for acoustic attenuation, such as locating bedrooms of a new dwelling away from a low-impact venue.

An acoustic report should not be necessary if the context of the site, surrounds and proposal present clear options for straightforward remedies and a professional assessment and report is unlikely to improve outcomes.

## Venue compliance with SEPP N-2

Clause 52.43 provides that a new residential use is to be satisfactorily protected from unreasonable levels of live music and entertainment noise. It is therefore unnecessary to consider whether existing noise emissions from a live music entertainment venue complies with SEPP N-2. This is a matter to be determined by a separate process through enforcement action or other proceeding.

An existing venue's compliance, or otherwise, with SEPP N-2 does not change a residential developer's obligation under Clause 52.43 to satisfactorily protect a new residential use from existing noise emissions. This is the case regardless of whether an existing noise sensitive residential use in the area has taken limited or no measures to protect themselves from noise emissions of an existing venue.

Any information supporting an application for a new residential use should address the existing noise impact on the proposed residential use.

This principle is in keeping with Clause 52.43 which seeks to provide for higher standards of acoustic protection in dwellings and venues and minimise the possibility for conflict between these land uses.

## Enforcement of noise complaints

Neighbours and *live music entertainment venues* should be encouraged to cooperatively solve noise issues by communicating directly to achieve a balanced solution. A collaborative approach is often the most effective and quickest means of solving noise conflict.

Where SEPP N-2 or relevant planning permit conditions are breached and a workable solution is not established between parties, a council may take formal enforcement action to achieve compliance.

A decision under Clause 52.43 of the planning scheme is based on the requirements set out in Clause 52.43-3. Enforcement will therefore generally be to ensure compliance with conditions specified in the planning permit.

Despite Clause 52.43, venues must still meet specified noise limits in SEPP N-2. Regardless of the establishment of a new *noise sensitive residential development*, a venue that is in breach of SEPP N-2 is still capable of being separately enforced under the policy.

Enforcement action against noise complaints can be taken by:

- Local government planning enforcement officers, who can enforce against planning permit conditions pursuant to the *Planning and Environment Act 1987*.
- EPA officers, who can issue a remedial notice under section 31A of the *Environment Protection Act 1970* for breach of SEPP N-2.

- Liquor licence compliance inspectors, who can enforce liquor licence conditions under the *Liquor Control Reform Act 1998*.
- Police officers, who can enforce liquor licence conditions, as well as direct a venue to take action to abate noise under section 48AB of the *Environment Protection Act 1970*.
- Local government environmental health officers, who can take action under the nuisance provisions of the *Public Health and Wellbeing Act 2008*.

## Some useful contacts

### Local Government

Find contact details for all Victorian councils at:

[www.delwp.vic.gov.au/localgovernment](http://www.delwp.vic.gov.au/localgovernment)

### Environment Protection Authority (EPA) Victoria

[www.epa.vic.gov.au](http://www.epa.vic.gov.au)

### Department of Environment, Land, Water and Planning (DELWP)

[www.delwp.vic.gov.au/planning](http://www.delwp.vic.gov.au/planning)

### Victorian Commission for Gambling and Liquor Regulation (VCGLR)

[www.vcglr.vic.gov.au](http://www.vcglr.vic.gov.au)

### Music Victoria

[www.musicvictoria.com.au](http://www.musicvictoria.com.au)

### Association of Australian Acoustical Consultants

[www.aaac.org.au](http://www.aaac.org.au)

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## Appendix 1

### Writing permit conditions

Conditions to attenuate noise in buildings are best established on a case-by-case basis, taking into account the site context and surrounding land uses. A suitably qualified acoustic engineer can provide advice to inform the drafting of effective noise attenuation conditions. In some instances, local circumstances may warrant conditions requiring verification testing by a suitably qualified acoustic engineer at a specified stage.

However, the following model conditions are useful in addressing noise issues that are typically generated from a *live music entertainment venue* or for a *noise sensitive residential use* near a *live music entertainment venue*.

### Permit conditions for a live music entertainment venue

#### SEPP N-2 compliance

Noise levels emanating from the premises must not exceed those required to be met under *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2*.

A report from a suitably qualified acoustic engineer should set out appropriate noise mitigation measures that are relevant to the subject site and its surrounds. These may include requirements for airlock entrances, sound limiters and other building design measures that can be translated as planning permit conditions. Further examples of permit conditions include:

#### Acoustic report

The use must not detrimentally affect the amenity of the area or the amenity of persons living in proximity to the site by reason of the emission of noise. The responsible authority may at any time require an acoustic report, prepared by a suitably qualified acoustic engineer. The report must be to the satisfaction of the responsible authority and identify all potential noise sources and noise attenuation work required to address any noise issues to comply with *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2*. The recommendations of the report must be implemented and complied with to the satisfaction of the responsible authority.

The above condition can be used if an acoustic report is not considered essential for the initial assessment.

#### Acoustic report – required before use or development commences

Before the use and/or development commences, an acoustic report must be prepared by a suitably qualified acoustic engineer and must be submitted to and approved by the responsible authority. When approved, the acoustic report will be endorsed and will form part of this permit. The acoustic report must assess the noise impact resulting from the proposed use and/or development and must make recommendations to limit the noise impacts in accordance with *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2* or any other requirement to the satisfaction of the responsible authority.

The provisions, recommendations and requirements of the endorsed acoustic report must be implemented and complied with to the satisfaction of the responsible authority.

The above condition can be used to demonstrate that the constructed development meets the approval requirement.

#### Management details sign

Prior to the commencement of the use, a clearly legible sign must be placed directly outside the entrance to the premises, providing a telephone number for contacting the designated manager at all hours during which the premises is operating. The design, lighting and maintenance of the sign must be to the satisfaction of the responsible authority.

#### Window and door closure

Any external openable walls, windows, glazing systems or doors shown on the endorsed plans must be closed at [insert time] except for access and egress to the satisfaction of the responsible authority.



## Timeframe for music / entertainment

Amplified music or entertainment (other than background music or entertainment played at background music levels) must cease by [insert time] to the satisfaction of the responsible authority.

## Background music

Except with the prior written consent of the responsible authority, the provision of music and entertainment on the land must be at a background noise level.

Background music only is permitted in the [insert room name] to the satisfaction of the responsible authority.

A condition specifying background music levels would typically be used in situations where music would be ancillary to the main use. It can also be used for a room in a venue that is in close proximity to a *noise sensitive residential use*, to help buffer impacts from a main performance room of a *live music entertainment venue*.

An accepted measure of what constitutes 'background music' is that the music is played at a level that enables patrons to conduct a conversation at a distance of 600mm without having to raise their voice to a substantial degree. The meaning of background music is discussed in detail in the VCAT decision *Whiting v Hosier Bar Pty Ltd* (Occupational and Business) [2005] VCAT 814.

## Noise limiter

Prior to commencement of the use, a noise limiter must be installed on the land. The noise limiter must:

- be set at a level specified by a qualified acoustic engineer,
- ensure the emission of noise from amplified music does not exceed the levels specified in the *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2*,
- be maintained and operated at all times music is played, and
- be to the satisfaction of the responsible authority.

Noise limiters that employ a power cut-off silencing device are not necessary, as a properly programmed noise limiter should ensure that noise emissions achieve compliance with SEPP N-2.

## No sound amplification

No external sound amplification equipment or loud speakers may be used for the purpose of announcement, broadcast, playing of music or similar purpose, to the satisfaction of the responsible authority.

## No external speakers

Speakers external to the building must not be erected or used without the prior written consent of the responsible authority.

Other conditions that may be useful in the context of a *live music entertainment venue* include conditions seeking to address patron behaviour outside a premises and potential noise caused by those patrons arriving and leaving the venue. This could be set out in a venue management plan. Separately, a liquor licence will address matters of community safety, setting out obligations such as trading hours, responsible serving of alcohol and crowd control.

Any conditions of a planning permit should, as far as possible, be consistent and complementary to the conditions of a liquor licence.

## Permit conditions for a noise sensitive residential use

When drafting permit conditions for a *noise sensitive residential use* near a *live music entertainment venue*, it is important to note that:

- Specifying SEPP N-2 noise limits in a permit for a *noise sensitive residential use* does not preclude a venue from having to comply with SEPP N-2. Compliance with SEPP N-2 remains mandatory for all public premises emitting music noise.
- While a *noise sensitive residential use* may be built with a suitable level of noise protection, openable windows may still render a nearby previously compliant venue as non-compliant with SEPP N-2. A balance needs to be struck between attenuating noise and ventilating a habitable room. Living near a *live music entertainment venue* means that both ventilation and noise attenuation at optimal levels may not be capable of being achieved at all times. A SEPP N-2 compliant venue will provide a reasonable balance between the requirements



of the noise maker and the nearby *noise sensitive residential use*.

- Addressing low frequency noise can be challenging, as individual contexts will present different noise resonance conditions. The advice of an acoustic engineer will usually be needed to establish the most appropriate requirements for a development proposal.

In keeping with Clause 52.43, council may specify a standard noise limit for a *noise sensitive residential use* near a *live music entertainment venue*. The limit can focus on habitable rooms, allowing non-habitable rooms such as walkways and laundries to be less attenuated. An example permit condition could read:

### Noise attenuation of habitable rooms

Habitable rooms must be designed and constructed to include acoustic attenuation measures that will reduce noise levels from any indoor live music entertainment venue to below the noise limits specified in *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2* to the satisfaction of the responsible authority.

For the purpose of assessing whether the above noise standard is met, the noise measurement point may be located inside a habitable room with windows and doors closed (Schedule B1 of SEPP N-2 does not apply).

Where a less stringent approach is being used for a *noise sensitive residential use* near a low-impact *live music entertainment venue* (such as a venue with daytime performances, background music only, performances of non-amplified music only or a modern, highly attenuated venue) the following permit condition may be sufficient:

### Noise attenuation to protect sleep

The development must be designed and constructed to include noise attenuation measures capable of protecting occupants from levels of music noise that may affect sleep in the night period in habitable rooms with windows and external doors closed, to the satisfaction of the responsible authority.

To supplement the above condition, the council may consider including a permit condition that provides for a later requirement for an acoustic report and remedial action, if needed. This would help address any situation where an occupant complains about music noise from an unchanged, pre-existing *live music entertainment venue*, recognising that the new *noise sensitive residential use* is the agent of change and is therefore responsible for addressing the noise issue.

### Request for acoustic report

The responsible authority may at any time require an acoustic report, prepared by a suitably qualified acoustic engineer. The report must be to the satisfaction of the responsible authority and identify all potential noise sources and noise attenuation work required to address any noise issues to comply with *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2*. The recommendations of the report must be implemented and complied with to the satisfaction of the responsible authority.

The building and urban design techniques suggested for *noise sensitive residential uses* in this practice note, could also inform the drafting of relevant permit conditions. For example:

### Glazing, doors and ventilation

The development must include external glazing and doors and an air conditioning or ventilation system designed by a suitably qualified acoustic engineer to the satisfaction of the responsible authority.

A high standard of noise attenuation control can be obtained with:

- External walls- minimum of 100 mm concrete precast panels, and
- Glazing- double glazing consisting of 8mm to 10 mm laminated glass and incorporating a minimum of 200 mm air gap between the glass panes.

The examples proposed in this practice note are provided as a guide only. Councils may have their own standard permit conditions and an acoustic engineer may suggest further alternatives.