

Proposed Code Amendment

Section 17.32.155 –Entertainment Establishments (Administrative Entertainment Permit Process and Conditional Use Permit Process)

A. Purpose

The purpose of this section is to establish standards for entertainment establishments that promote economic vitality and cultural activities while protecting surrounding properties from excessive noise, traffic, criminal activity, and other adverse impacts on public health, safety, and welfare.

B. Definitions

For purposes of this section:

Acoustical Music shall mean any person playing a musical instrument or singing between the hours of 9 a.m. and 10 p.m. in any place or establishment where food or alcoholic beverages are sold, offered for sale, or given away, who is employed by, working for, or performing at the invitation and with the permission of the owner or operator of the place or establishment and the performance is being provided at a sound level similar to ambient music. Such performers may be strolling or stationary within the establishment. Any type of acoustical music occurring after 10:00 P.M. shall require an Entertainment Permit.

Ambient Music shall mean low-volume, background music, whether amplified or not amplified, not audible to a reasonably hearing person at twenty-five (25) feet from any portion of the exterior of the building (including outdoor patios/dining areas), and which is intended to provide ambience and not to entertain.

Amplified Music shall mean any type of music performed by a live performer that is utilizing any type of amplification, including but not limited to PA system, or microphone.

Dance or Dancing means movement of the human body accompanied by music or rhythm.

Dance Floor means an area greater than approximately 100 square feet used for dancing, whether as a primary or accessory use.

Entertainment shall be the performance by one (1) or more of any of the following performed live with amplified sound by one (1) or more persons, whether or not done for compensation and whether or not admission is charged: (i) musical act, including karaoke; (ii) theatrical act, including a play, revue, or stand-up comedy; (iii) dance; (iv) magic act; (v) disc jockey; or (vi) similar activity. This shall also include recreational type activities such as instructor led uses such as dance, games (trivia/bingo), and enrichment uses that utilize any type of amplification. Entertainment shall not include ambient music that is intended to provide ambience and not for separate entertainment. The use of acoustical music by commercial establishments prior to 10:00 P.M. shall also not require a conditional use permit for Entertainment.

Entertainment Permit shall mean the permit issued under this code section, as noted in this section Entertainment occurring after 10 p.m. requires both an Entertainment Permit

and a Conditional Use Permit, while Entertainment occurring between the hours of 9 a.m. and 10 p.m. only requires an Entertainment Permit.

"Security Plan" shall include a description submitted by an applicant for an Entertainment Permit that describes how they conduct crowd control; stay within occupancy requirements; manage the entryways, exits, and public right of way around their business to prevent loitering and allow for ingress and egress of patrons. Additional requirements for a Security Plan may be set by applicable city policies.

"Security Personnel" shall mean persons employed or contracted to provide crowd management, security services, or public safety monitoring and must all be licensed security guards with a valid license (guard card) issued by the California Bureau of Security and Investigative Services (BSIS) and shall have their guard card with them while performing duties as a security guard. The licensed security personnel may be employees of the establishment or licensed security personnel retained from a licensed security firm. All on-duty licensed security guards shall be uniformed and shall comply with the uniform requirements set forth in California Business & Professions code section 7582.26.

C. Entertainment Permit and Security Plan Required

It shall be unlawful for persons or businesses to provide in, or upon, any premises in the city, Entertainment without an Entertainment Permit issued under this code section.

It shall be unlawful for persons or businesses to provide in, or upon, any premises in the city, Entertainment, at any time, not otherwise exempt from the requirements of this code section without a Security Plan.

D. Exemptions from the Entertainment Permit Requirement

The following types of Entertainment and events are exempt from the Entertainment permit and Security Plan required by this section. An exemption does not relieve any establishment or event from complying with all other applicable laws, including, but not limited to, the laws related to special event requirements, noise levels and nuisances, particularly those contained in this Code.

1. Entertainment conducted solely on or at a location that is owned, operated by, or leased by, to, or from, a federal, state, or local government agency, including but not limited to school districts.
2. Entertainment conducted by or sponsored by a religious group or any nonprofit public benefit organization, organized or incorporated for charitable nonprofit purposes, having an established membership, and which holds meetings at regular intervals of not less than once per three-month period, when proceeds, if any, arising from the entertainment event are used for the purpose of the nonprofit organization, and the Entertainment is being conducted at a property that is operated by the nonprofit organization.
3. Entertainment lawfully conducted at any City park, building or recreational facility.
4. Entertainment provided for members and their guests at a private club having an established membership when admission is not open to the public.

5. Entertainment provided for invited guests at a private event such as a wedding reception, banquet, or celebration where there is no admission charge.
6. Performances by the students at educational institutions as defined by the California Education Code where such performances are part of an educational or instructional curriculum or program.
7. Dance lessons, theatrical and performing arts lessons and student recitals that conclude no later than 10:00 p.m.
8. Book readings, book signings, poetry recitations, plays, and any other similar types of public speaking events or lectures consisting of the spoken word and or the use of ambient music or incidental music during the event, and if such event concludes no later than 10:00 p.m.
9. Modeling of clothes provided in conjunction with a retail clothing business that is operating in compliance with all municipal codes and laws and where the clothes modeled are sold by the business, the modeling is done during hours of normal operation of the business, and no admission charge is required to observe or attend.
10. Entertainment consisting of ambient or incidental music provided for guests or patrons by radio, jukebox, television, or similar device, or by café musicians. If an admission charge is required to observe or attend these entertainers providing the music, then music is not considered ambient or incidental.

E. Permit Requirements

1. No Entertainment shall be conducted except in compliance with this section.
2. Entertainment not otherwise exempt from requirements occurring after 10:00 p.m. shall require approval of a Conditional Use Permit pursuant to Chapter 17.38, and Chapter 17.32.155.L.
3. Security Plan Requirements. A Security Plan shall be required for Entertainment Permits.

F. Entertainment Permit Application Fee

Any person desiring to obtain an Entertainment Permit shall submit an Entertainment Permit Application to the Planning and Community Preservation Department, Planning Division, in the manner and form described in this section. At the time of submittal of such application, a nonrefundable fee as established by the City's Fee Schedule shall be paid to defray the cost of review, investigation, report, and inspections required by this section. The submission of an Entertainment Permit Application does not authorize the entertainment until such permit has been granted by the Planning and Community Preservation Director or their designee. The fees established in this section are in addition to the City's business tax and any other license or permit fee imposed by this Code upon the permittee.

G. Entertainment Permit Application Materials

The applicant shall submit the Entertainment Permit Application along with the following information:

1. Detailed and fully dimensioned site plan;
2. Floor plan identifying entertainment areas;
3. Proposed hours of operation and days of the week;
4. Occupancy load;
5. Detailed description of entertainment activities;
6. Security Plan.

H. Entertainment Permit Application Review

Upon receipt of the completed application, the Planning and Community Preservation Director, or their designee, in consultation with other applicable city departments, including the police, fire, and building departments, shall review the application within 30 days and conduct an investigation. The Planning and Community Preservation Director, or their designee shall ensure that all of the following components have been provided:

1. The required fee has been paid.
2. The application conforms in all respects to the requirements in 17.32.155.G of this section.
3. The applicant has not made any false, misleading or fraudulent statements in the application.
4. The applicant has fully cooperated in the investigation of their application
5. The applicant has not been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under Cal. Penal Code § 290, Cal. Health and Safety Code § 11590, or of conduct violating Cal. Penal Code §§ 647(a), 647(b), or any crime involving dishonesty, fraud or deceit.
6. The applicant is at least 18 years of age; or, if the applicant is to be employed in a place of business where alcoholic beverages are to be sold or consumed, the applicant is at least 21 years of age.
7. The applicant has not engaged in conduct which would constitute grounds for suspension or revocation under this section.
8. The applicant has not had an Entertainment Permit denied or revoked within the past six months.
9. The business establishment in which the entertainment is proposed has operated in good standing with the city regarding calls for service, violations of the municipal code, compliance with land use entitlements, or violations from the Department of Alcoholic Beverage Control.

I. Issuance of the Entertainment Permit

An Entertainment Permit may be approved by the Planning and Community Preservation Director or their designee when all of the following standards are met:

1. Entertainment activities shall cease no later than 10:00 p.m. Monday through Sunday;
2. The business establishment shall comply with all applicable building, fire, health, and zoning regulations;
3. The proposed Entertainment is compatible with surrounding land uses;
4. If outdoor amplified Entertainment is proposed, a noise analysis addressing noise impacts in conformance with the City of Visalia's Noise Ordinance (Chapter 8.36) shall be required and accepted by the Director or their designee if the outdoor amplified area is located within 1,000 feet of an existing residence or a sensitive receptor. Compliance of the noise levels, subject to the Visalia Noise Ordinance, shall be verified by the acoustical consultant prior to operation.
5. That issuance of the Entertainment Permit and conduct of the Entertainment at the proposed location, as conditioned, is consistent with federal, state and local laws, rules, regulations and any existing special permit(s).
6. That issuance of the Entertainment Permit at the proposed location, as conditioned, will not constitute an undue burden on the neighborhood or surrounding area because of its proximity to residences, inadequate parking or other neighborhood circumstances and will not interfere with the reasonable use and enjoyment of the neighborhood by its residents.
7. Neither the permittee or any responsible person or principal of the permittee has, within the past five years, been convicted of a felony or other crime of moral turpitude that is substantially related to the qualifications, functions or duties of a proprietor of premises upon which the Entertainment is conducted.
8. Neither the permittee or any responsible person or principal of the permittee has a history of committing, permitting or failing to prevent significant violations of the city code, or any license or permit, in connection with an entertainment establishment for which he or she was a responsible person.
9. The permittee does not owe the City a fee or an administrative penalty for violation of a provision of this section or a condition of an Entertainment Permit issued pursuant to this section.
10. The establishment has not been subject to permit revocation, suspension, or significant code enforcement actions during the preceding 12 months.
11. Where the Planning and Community Preservation Director, or their designee, does not approve an Entertainment Permit, the Planning and Community Preservation Director or their designee shall inform the permittee of the reason(s) for the denial in writing. An appeal to the Planning Commission may be made pursuant to this code section.

J. Administrative Entertainment Permit Approval Findings

The Planning and Community Preservation Director, or their designee, may approve the permit upon finding:

1. That the proposed project will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.
2. The use is consistent with zoning regulations.
3. The proposed Entertainment will not create a public nuisance.
4. Adequate measures are in place for noise control and patron management.
5. That the proposed Entertainment use would be compatible with adjacent land uses.

K. Entertainment Permit Baseline Conditions

The following baseline conditions shall be applicable to all businesses with an Entertainment Permit. The Planning and Community Preservation Director, or their designee, in consultation with other departments, may require additional conditions of approval on an Entertainment Permit based on the specific location and operational characteristics of the business. These requirements do not modify or limit in any way the authority of the Planning and Community Preservation Director, or their designee, to enforce the requirements found in this ordinance against any person, or of the Chief of Police, Fire Marshal, Building Official or Neighborhood Preservation Manager to immediately take action in the event of an imminent threat to public health or safety.

The Planning and Community Preservation Director, or their designee may impose conditions including but not limited to the following:

1. *Compliance with laws.* All individuals and/or business entities who obtain an Entertainment Permit shall comply with all applicable laws, regulations, ordinances and stated conditions.
2. *Time Restrictions.* Entertainment may not take place between the hours of 10:00 p.m. through 11:00 a.m. The time restrictions may be further limited by an applicable conditional use permit or an Entertainment Permit.
3. *Type, manner and hours of operation.* The type, manner, frequency, dates and times during which Entertainment is provided shall be limited to what is expressly indicated on the Entertainment Permit. Any substantial changes to the type, manner, frequency, dates or times of Entertainment shall require the permittee to submit an application for an amendment to the Entertainment Permit, which shall be processed in the same manner as a new Entertainment Permit, prior to making any changes to the business operation.
4. *No adult entertainment.* As defined by Visalia Municipal Code Chapter 17.62, no adult entertainment shall be conducted on the permitted premises.
5. *Entertainment Permit filed on-site.* Permittees shall keep, place, or post an approved Entertainment Permit, including conditions of approval on the premises in a place easily accessible by city staff.

6. *Noise.* Permittee shall ensure that noise emanating from the business shall not be unreasonably loud or disturbing and shall comply with the noise standards contained in Chapter 8.36 Noise.
7. *Occupancy.* Building occupancy loads shall be posted at all times. Permittee shall be responsible to keep count of the number of occupants present at any given time and provide that information to city staff upon request.
8. *Security plan.* Permittee shall be responsible for adhering to the security plan reviewed and approved by the Visalia Police Department and Visalia Code Enforcement Division. No changes to the approved Security Plan shall occur without approval from the Visalia Police Department and Visalia Code Enforcement Division. It is the responsibility of the business establishment to update the security plan on file with the city when/if there are any changes in the operational characteristics of the establishment which may alter the contents of the security plan.

Permittee shall be responsible for maintaining an adequate security staff, per its security plan, to supervise patrons and those waiting to enter. Security staffing requirements shall be as follows:

- i. Potential patrons awaiting entry in a defined "queue" shall be counted toward the calculation of required security staffing levels.
- ii. For up to 50 people inside (or in a defined queue waiting to enter) an establishment, security may be provided by the employees of the business, subject to Visalia Police Department approval.
- iii. There shall be one additional licensed security guard for each subsequent increment of 50, plus one guard for additional floor.
- iv. The attire of each security guard shall clearly indicate the guard's affiliation with the establishment by means of having "SECURITY" displayed on a shirt in large letters or other clearly-visible form of identification.

The approved Security Plan shall be kept available on the premises and shall be presented immediately upon request by a City of Visalia police officer and/or code enforcement officer.

9. *Loitering.* Permittee shall take steps to prevent patrons from loitering in the immediate area, littering or making excessive noise outside of the establishment and at closing time.
10. *Doors.* All exterior doors must be closed during the hours of Entertainment, except to allow ingress or egress of patrons, or in the case of emergencies.
11. *Windows.* All exterior windows that are designed as part of the building that open onto the primary frontage of the building may be open during hours of Entertainment until 10:00 p.m. After 10:00 p.m. all exterior windows must be closed, except in the case of emergencies. Exceptions to this requirement may be considered as part of a conditional use permit based on the business location, building design, business operations, and outdoor Entertainment.

L. Conditional Use Permit Required for Extended Hours of Entertainment

Application of a conditional use permit shall be required when the following Entertainment request are made:

1. Entertainment is requested beyond 10:00 p.m.;
2. Outdoor Entertainment is proposed after 8:00 p.m.;
3. The Planning and Community Preservation Director, or their designee, determines that the request for an Entertainment Permit may create significant impacts and shall require the request to be reviewed by the Planning Commission.

M. Public Hearing

All conditional use permit applications shall be processed pursuant to the requirements of Chapter 17.38 Conditional Use Permits.

N. Conditional Use Permit Entertainment Permit Application Fee

At the time of submittal of the Entertainment Permit Application that requires a Conditional Use Permit, a nonrefundable fee as established by the City's Fee Schedule shall be paid to defray the cost of review, investigation, report, and inspections required by this section. The submission of an application for a Conditional Use Permit associated with an Entertainment Permit does not authorize the Entertainment requiring the issuance of the Conditional Use Permit until the Conditional Use Permit has been granted by the Planning Commission. This provision does not prevent an applicant from applying for and receiving an Entertainment Permit allowing Entertainment that does not require a Conditional Use Permit while the sections of their Entertainment Permit request that requires a Conditional Use Permit are reviewed. The fees established in this section are in addition to the City's business tax and any other license or permit fee imposed by this Code upon the permittee.

O. Conditional Use Permit Entertainment Permit Application Materials

The applicant shall submit the conditional use permit application along with the following information:

1. Detailed and fully dimensioned site plan;
2. Floor plan identifying Entertainment areas;
3. Proposed hours of operation and days of the week;
4. Occupancy load;
5. Detailed description of Entertainment activities;
6. Detailed Operational Standards
7. Detailed Security Plan.
8. Detailed Patron Management Plan

P. Conditional Use Permit Entertainment Permit Baseline Conditions

The Planning Commission, at their discretion, in consultation with other departments, may require additional conditions of approval on a Entertainment Permit based on the specific location and operational characteristics of the business. These requirements do not

modify or limit in any way the authority to enforce the requirements found in this ordinance against any person, or of the Chief of Police, Fire Marshal, Building Official or Neighborhood Preservation Manager to immediately take action in the event of an imminent threat to public health or safety.

The following baseline conditions as found in Chapter 17.32.155.K shall be applicable to all businesses with an Entertainment Permit with the exception of the following:

1. *Time Restrictions.* Businesses shall not conduct Entertainment regulated under this code section between the hours of 1:30 a.m. through 11:00 a.m. The time restrictions may be further limited by an applicable conditional use permit or an Entertainment Permit.

Q. Entertainment Permits nontransferable

No Entertainment Permit may be sold, transferred or assigned by a permittee, to any other person or persons. Any such sale, transfer or assignment, or attempted sale, transfer or assignment, shall be deemed to constitute a voluntary surrender of such permit and such permit shall thereafter be null and void.

H. Permit Suspension or Revocation

Any Entertainment Permit issued pursuant to this section may be suspended or revoked upon finding:

1. Violation of permit conditions;
2. Repeated violations of law;
3. Failure to maintain required security measures;
4. Creation of a public nuisance;
5. False information provided in an application.

I. Appeals

Administrative decisions under this section may be appealed to the Planning Commission. The deadline for an appeal to be made is ten (10) days after the written notice of the decision by the City is provided to the applicant. Planning Commission decisions may be appealed to the City Council pursuant to the procedures established in this Title.

The decision of the Planning Commission on a conditional use permit shall be subject to the appeal provisions of Section 17.02.145.