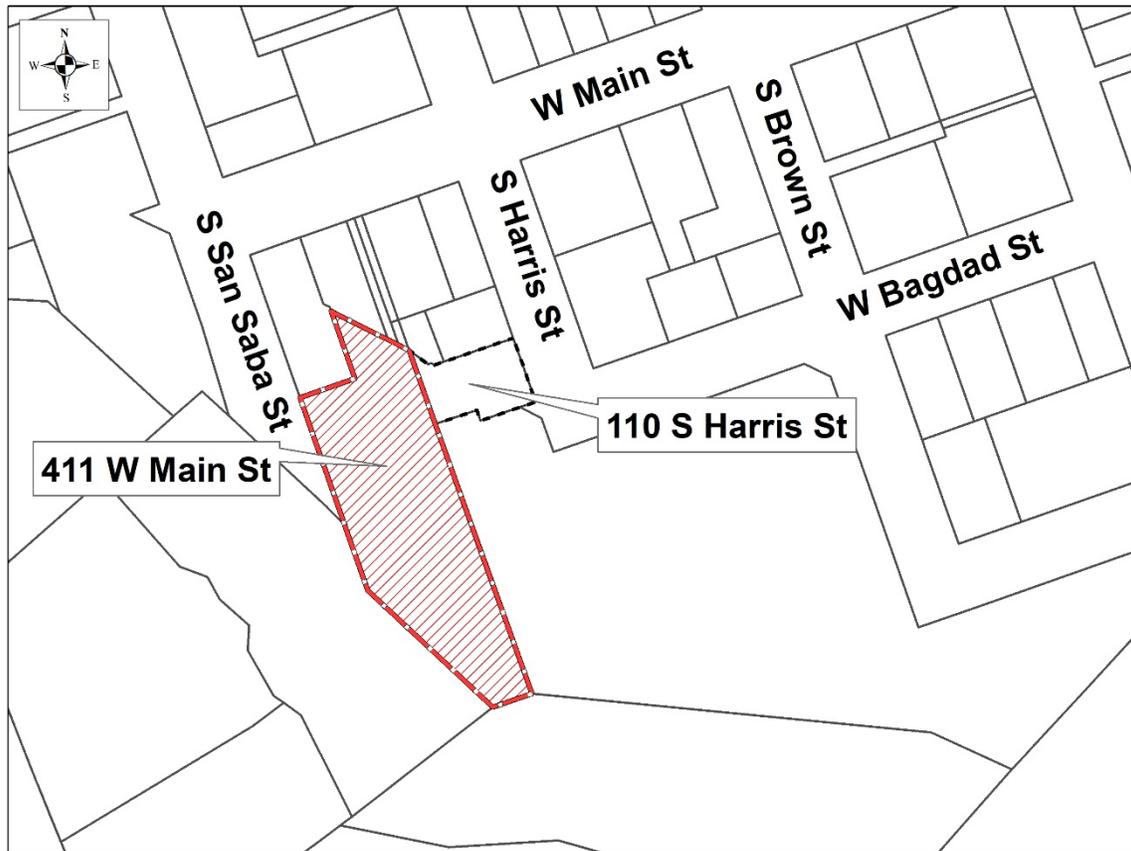


SPECIAL EXCEPTION REQUEST
411 Main St.
URBAN Rooftop



SPECIAL EXCEPTION REQUEST: To allow outdoor amplified live music at a restaurant/bar.

BACKGROUND: The zoning code provides a special exception process for amplified live music in the **MU-2 (Mixed-Use Downtown Medium Density)** zoning district. The restaurant/bar is URBAN Rooftop, which contains an outdoor seating area. The proposal is to have live music performed in the evenings and on weekends during the restaurant's normal operating hours. The applicant states that it is their intent is to offer background music for their guests, to allow for conversation while they eat dinner. The rooftop space would allow room for a larger musical group than the restaurant space. Proposed outdoor amplified live music hours of operation are:

- Tuesday – Thursday: 5pm – 10pm
- Friday – Saturday: 5pm – Midnight

The City's noise ordinance is in effect and is enforced by the Police Department in response to citizen complaints. The ordinance sets daytime and nighttime

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**411 Main St.
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maximum sound levels for both residential and commercial & industrial districts. The **MU-2** district is categorized as commercial & industrial.

The noise ordinance also contains specific regulations for outdoor music venues in the **MU-1 (Mixed-Use Historic Commercial Core)** zoning district. These regulations include restrictions on hours of operation and decibel levels, a requirement for a permit, and possession of a decibel meter on-site. While these regulations do not apply in the MU-2 district, they have been adapted to serve as conditions of approval for this special exception.

A special exception to allow this use requires a review of the location and intensity of the use, to ensure its appropriateness at this location. Conditions can be applied with approval of the special exception.

DATE OF REVIEW: August 11, 2020

OWNERS: Nagle Holdings, LP

APPLICANT: URBAN Eat.Drink, LLC

DESCRIPTION: Nagle Park, Block A, Lot 1, also known as 411 W. Main St.

ZONING: MU-2 (Mixed-Use Downtown Medium Density)

LAND USE: Restaurant/bar

LOCATION: West of Harris St. and Bagdad Ave.

ADJACENT LAND USE: North: MU-2 (Mixed-Use Downtown Medium Density)
– office, salon, school
South: MU-2 (Mixed-Use Downtown Medium Density)
– municipal building
East: MU-2 (Mixed-Use Downtown Medium Density)
– restaurant, office
West: MU-2 (Mixed-Use Downtown Medium Density)
– Lake Creek

GENERAL PLAN POLICY: Downtown Mixed Use

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SPECIAL EXCEPTION CRITERIA: The requested special exception shall be reviewed by the ZBA according to specific criteria described in Section 10-53 of the Zoning and Development Code.

- 1) Consistent with Zoning Ordinance:
The proposed exception shall be specifically listed as permitted by special exception in the zoning district under consideration. The proposed exception shall meet the purpose and intent of this chapter and the use shall meet all the minimum standards established in this chapter for this type of use.
- 2) Consistent with General Plan:
The proposed exception shall be consistent with the development policies and goals and objectives as embodied in the general plan.
- 3) Compatible with surrounding area:
The required site plan shall ensure compatibility with existing land uses in the surrounding area. The proposed use will not be detrimental to the health, welfare, and safety of the surrounding neighborhood or its occupants, nor be substantially or permanently injurious to neighboring property.
- 4) Harmonious with character and scale of surrounding area:
The proposed site plan, circulation plan, and schematic architectural, signage, and landscaping designs shall be harmonious with the character of the surrounding area.
- 5) Impacts minimized:
The likely impact on public infrastructure such as roads, parking facilities, water and wastewater systems, and on public services such as police and fire protection and solid waste collection, and the ability of existing infrastructure and services to adequately service the proposed use shall be minimized without negatively impacting uses in the area and in the city.

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- 6) Effect on natural environment:
The potential creation of noise, glare, fumes, dust, smoke, vibration, fire hazard, or other injurious or obnoxious impacts shall be minimized.

STAFF RECOMMENDATION:

Approval of the special exception, with appropriate conditions, including specific noise regulations, applied. Recommended conditions are contained in Exhibit 'B'.

EXHIBIT 'A'



EXHIBIT 'B'

Recommended Conditions:

- (a) *Restrictions on time and decibel levels.*
 - (1) "Permitted hours" shall mean the times set forth below:
 - a. From 5:00 p.m. to 10:00 p.m. on Tuesday, Wednesday and Thursday.
 - c. From 5:00 p.m. to Midnight on Friday and Saturday.
 - (2) During permitted hours, owner and/or tenant shall not operate sound equipment in excess of 80 decibels as measured at the property line of the business.
 - (3) It shall be a violation for the owner and/or tenant of an outdoor music venue to operate sound equipment in excess of the decibel limits or to exceed the limitation on the number of musicians set out in this section.
- (b) *Decibel meter required.*
 - (1) It shall be a violation for the owner and/or tenant of an outdoor music venue to operate sound equipment without possessing an amplified sound permit and a decibel meter located on-site which has been approved by the chief of police (or his/her designee).
 - (2) The chief of police (or his/her designee) may inspect an outdoor music venue to verify whether an approved decibel meter is located on-site.
- (c) *Posting required.*
 - (1) The outdoor music venue shall post the Order of the Zoning Board of Adjustment inside the business so that it is visible to the general public.
- (d) *Registration requirements.*
 - (1) The owner and/or tenant shall provide to the chief of police (or his/her designee) the following information:
 - a. The name, address, telephone number, and title of the individual responsible for the operation of the outdoor music venue;
 - b. The business name, address, and telephone number of the outdoor music venue;
 - c. The name, address, and telephone number of the business's registered agent on file with the Texas Secretary of State;
 - d. A statement that the outdoor music venue has an approved decibel meter on-site; and
 - e. A copy of the recorded Order of the Zoning Board of Adjustment.
- (e) *Revocation of Permission for Outdoor Live Music.*
 - (1) The chief of police shall revoke the permission granted by the Order of the Zoning Board of Adjustment if the owner and/or tenant has been found guilty of violating any provisions of this section three times in a 12-month period.
 - (2) The owner and/or tenant shall be prohibited from applying for a special exception for outdoor live music one year from the date of revocation.



W MAIN ST

S SAN SABA ST

S HARRIS ST

S BROWN ST

W BAGDAD AVE

**Subject Tracts
1.57 ac.**

IH 35

