

PC March 9, 2023
Item # 3
6 pages

Fw: Live should be removed at March 9 2023 Planning Comm meeting for amplified outdoor concert use

Linnea Marengo <ldmarengo@yahoo.com>

Mon 3/6/2023 10:01 AM

To: Planning Department <planning@edcgov.us>

1 attachments (84 KB)

Live should be removed at March 9 2023 Planning Comm meeting for amplified outdoor concert use.pdf;

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Attached please find a Public Comment for the Planning Commission meeting on 3/9/23 amending the Ranch Marketing and Winery ordinance PC 03-09-23 File #23-0435. Thank you.

Linnea Marengo attached a document



Linnea Marengo has attached the following document:

Live should be removed at March 9 2023 Planning Comm meeting for amplified outdoor concert use

Google LLC, 1600 Amphitheatre Parkway, Mountain View, CA 94043, USA
You have received this email because marencolinnea@gmail.com shared a document with you from Google Docs.



Revisions to the Ranch Marketing Ordinance and the Winery Ordinance

Proposed New Use
"Live amplified outdoor concerts"

Recommendation:
Remove Live and Live Performer

Proposed New Use Should Read
"Amplified outdoor concerts"

The requirement of live and live performer should be eliminated from the proposed new Use Type "Live amplified outdoor concerts" in the Ranch Marketing and Winery draft amended ordinance Legistar Item # 23-0277. (Refer, for example, to Table 130.40.400.1 Wineries Allowed Uses Matrix in the draft ordinance which lists this new Use Type. Page 9 of 38 draft.)

In the draft revision a new use type is proposed as:

"Live outdoor amplified concerts" means any musical outdoor performance in which sound amplification devices are used by one or more live performers.
Wineries. C. Definitions:, pg. 7 of 38, Sec. 13.40.400 Wineries

Instead, the proposed new use type should be modified to read:

"Outdoor amplified concerts" means any event in which outdoor music or voice sound amplification devices are used .

Suggested Revised definition under Sec. 130.40.400 Wineries C. Definitions

"Outdoor amplified concert" means any outdoor performance in which sound amplification devices are used for music or voice.

Suggested Revised definition in J. in Chapter 130.44 - Ranch Marketing, Section 130.44.100 Definitions Draft Revised Ordinance page 20 of 38

Loud outdoor amplified noise caused by music and voice is already recognized as a serious problem related to Ranch Marketing and Winery special events. Simplification and clarification are most important. Solve the recognized problem - outdoor amplified music and voice. Don't make the issue more complicated and troublesome with the additional criteria of Live and Live Performer. Focus on the problem - loud outdoor amplified music and voice, whether live or not.

Reasons to Eliminate the Criteria of Live and Live Performers from the Proposed Use Type Live Amplified Outdoor Concerts

Loud outdoor amplified music can be painful, irritating and disruptive, whether live or not. It simply does not matter to the ear and the brain whether the problematic amplified sound source is live or pre-recorded. In fact, it can be impossible to determine whether a loud noise is live or not, including when the source of the amplified sound is not visible, for example, hidden behind a building or a hill between larger properties in more rural residential areas of El Dorado County.

Evidence of live versus not live amplified sound can be problematic. Must neighbors be sneaking around spying on their neighbors to determine if an outdoor amplified loud music or disc jockey voice is live or not on the nearby property in a rural residential area? Outdoor and amplified music and voice are the root of the problem - not whether the sound source is live or not.

Removing live versus not live amplified outdoor sound reduces one more complicating factor in a situation already riddled with conflict. While the criteria of live or live performer might be relevant for certain larger commercial events such as a music festival designed to attract 2,000 paid attendees, it is not a defining criteria in an area such as a rural residential community. Loud amplified outdoor noise is the nuisance whether live or pre-recorded.

In rural residential and rural agriculture areas, wildlife and domestic animals do not recognize whether a loud amplified sound is live or not. They simply recognize a strange, disturbing, possibly life threatening and unnerving sound.

The Glossary Article 8 defines incompatible use for an agriculture property as those uses which are apt to cause conflict and threaten the viability of agricultural uses. Cattle and calves on an ag property adjacent to a winery or ranch marketing event, such as an outdoor wedding reception with amplified disc jockey voice and pre-recorded music, do not distinguish between a live or recorded source of loud amplified sound. They are simply forced to move away from the noise source if possible. Can you imagine a mother cow delivering her baby calf when a loud amplified sound suddenly begins out of nowhere and continues? She does not distinguish between live or not.

There is no distinction between a live or recorded sound source to a wild or domestic animal living outdoors. Recorded can be just as loud and disturbing as live sound, especially when it continues on.

Article 8, Glossary, defines nuisance as any use that is offensive to the sense or obstructing one's free use of their property. A noise nuisance makes no distinction between live or recorded amplified sound.

Title 9, Chapter 9.02.040 defines public nuisance as “Anything injurious or likely to become injurious to health or safety, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property...” There is no distinction between live or not in this definition of public nuisance - offensive to the senses is just that, whether from live or recorded loud noise. An obstruction of the free use of one’s property does not care when one’s comfortable enjoyment of their property is disturbed by live or pre-recorded amplified nuisance noise.

The Noise Ordinance does not distinguish between live or not. There is no distinction between live or not live in Sec. 130.37.070 Noise Reduction Measures which currently reads:

“For outdoor concerts and events utilizing amplified sound system(s), a discretionary permit shall be required in the form of a Temporary or Conditional Use Permit.”
Page 72 – Article 3 El Dorado County Code Title 130 Adopted 12/15/2015 (SCH# 2012052074)

The proposed use appears to replace the use “Music Festivals & Concerts” which did not distinguish between live or not (in the Wineries Allowed Uses Matrix Table 130.40.400.1 adopted 12/15/2015).

Ordinance codes and land use types should be defined as clearly as possible. Lack of clarity runs the risk of potential lawsuit to the County, and makes enforcement more difficult. In this case one could even question the definition of concert which is not listed, for example, in the Glossary, Article 8, Chapter 130.80. Perhaps the new use type should read: ‘Outdoor amplified music and voice’.

The ear and the brain do not distinguish between live or recorded disruptive loud sounds. Either type of loud amplified sound source can be disruptive to the brain and one’s health and well-being.

Existing El Dorado County codes do not tend to make a distinction between live or not outdoor amplified music and voice. Why should this particular new land use contradict much of what already exists?

The General Plan and Title 9 do not make a distinction between live or not live sources of noise.

See Appendix A for General Plan and Title 9 positions related to noise issues and concerns.

Appendix A

The General Plan and Title 9 refer to loud noise, but they do not make a distinction between live or not.

The Ranch Marketing and Winery ordinances should in no way contradict or pose possible conflict with the General Plan and other County ordinances.

Title 9

The Title 9 Ordinance refers to issues of why amplified voice and music must be controlled but no distinction is made between live or not live sources of outdoor amplified sound.

Sec. 9.16.040. - Loud and raucous noises—Definitions.

Loud and raucous noise meaning includes:

- *The human voice or any record or recording thereof when amplified by any device whether electrical or mechanical or otherwise to such an extent as to cause it to unreasonably carry on to public or private property or to be heard by others using the public highways, public thoroughfares, or public buildings;*
- *Any sound not included in the foregoing which is of such volume, intensity, or carrying power as to interfere with the peace and quiet of persons upon public or private property or other users of the public highways, thoroughfares, and buildings.*

Public nuisance. (Title 9, Chapter 9.02.040) states:

A public nuisance shall consist of one or more of the following:

- Anything injurious or likely to become injurious to health or safety, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

General Plan

The El Dorado County General Plan also addresses the need to protect our residents from noise problems but does not distinguish between live or not live noise sources:

The Principle of the El Dorado General Plan Public Health, Safety, and Noise Element reads: *The Plan must identify public health and safety issues and provide guidance for protecting the health, safety, and welfare of El Dorado County residents.*

GOAL 6.5: ACCEPTABLE NOISE LEVELS Ensure that County residents are not subjected to noise beyond acceptable levels.

Policy 6.5.1.14 The County will adopt a noise ordinance to resolve neighborhood conflicts and to control unnecessary noise in the County. Examples of the types of noise sources that can be controlled through the use of a quantitative noise ordinance include noisy mechanical equipment (e.g., swimming pool pumps, HVAC units), and amplified music in commercial establishments.

PC MARCH 9, 2023

ITEM #3
5 PAGES

To: The El Dorado County Planning Commission

From: Jeff Pyle

Subject: Public Comment for Meeting 3/9/23 File #23-0435

Date: March 6, 2023

Please submit the attachment to the Planning Commission as a Public Comment for their meeting on March 9, 2023 agenda item to discuss Ranch Marketing and Winery ordinance amendments.

Thank you,

Sincerely,

Jeff Pyle

A handwritten signature in black ink, appearing to read "Jeff Pyle", written in a cursive style.

Public Comment
Planning Commission Meeting March 9, 2023 File #23-0435
Ordinance adopting Revisions to the Ranch Marketing Ordinance and the Winery Ordinance

Proposed Room Rental Event

OR23-0001/Ranch Marketing and Winery Ordinance Amendments Planning Commission/March 9, 2023 Staff Memo Page 4 of 6 states:

“As described above in the Discussion / Background section, public input was taken at two public meetings, the Joint Board Ad Hoc and Ag. Commission Ad Hoc public workshop on January 17, 2023, and the Ag. Commission public hearing on February 8, 2023. This public comment, along with the recommendations from the Ag. Commission (Attachment D) resulted in subsequent modifications in addition to the proposed amendments of the Ad Hoc Committees. These modifications include:”

“Development of a “Room Rental Event” allowing up to 40 persons that would not be counted for purposes of determining the maximum number of special events allowed in a calendar year. This change was added after concerns raised in the public workshop that rental of a conference room would be a special event.”

The Proposed Draft of a New Use Type Room Rental Event (Below) Conflicts with the Above Intention and Statement of Public Concerns

The result of a new use type entitled room rental event is proposed in the draft. This new use as drafted reads as follows:

“4. Room Rental Event. Room Rental Events are allowed, and are not counted for purposes of determining the maximum number of special events allowed under Subsection E.3 (Special Events) above in this Section, if the winery owner complies with all the following requirements:

- a. The event is held indoors and involves the rental of a portion of the winery.
- b. There will be no more than forty (40) persons in attendance.
- c. No amplified music or amplified speech is allowed.”
(page 12 of 38 Planning Commission meeting draft)

“Room rental event” means an event that involves the winery owner renting or donating a portion of the winery for hire that are held indoors.
(page 8 of draft in Planning Commission document draft)

Questions and Concerns:

Why does the draft for a room rental event now refer to a portion of a winery which can be rented by the winery owner in contrast to the original concern for rental of a single conference room? There is a potentially vast difference in size and scope between a 'conference room' and a 'portion of a winery'. A 'portion of a winery' can include a great deal of space and multiple rooms rather than just one room.

Why has the end result as drafted been changed from the intent of the original comment(s) made in the public meetings? While the issue of room rental for hire may sound simple and clear, it is not. While the original intention was valid, the implementation is too confusing and conflicting.

How did the intention of renting out a conference room or hosting a large dinner party at home expand into renting a portion of a winery? And without any limitation to the size of the room rented or number of room rentals per day or per year. There can be a vast difference between these types of events. A "portion" of a winery is very unclear. This could include a large amount of space, multiple rooms and multiple buildings and multiple days.

How many rooms can be rented at once and at what price? By definition of 'rental' the purpose becomes commercial and generates income. Why, then, is this not considered a facility rental? What is the difference? Should there be a limit to income generated by renting a 'room'? Is food and beverage included? Are use of the kitchen and restrooms also included?

What does a room rental have to do with agriculture which should be the primary product of ranch marketing or a winery?

What is the difference between a personal birthday or private gathering in one's home, a facility rental as a special event, a business meeting in a conference room rented for a fee, or rental of a portion of a winery? How does one distinguish between these types of private gatherings and commercial events?

What is the difference between room rental event and facility rental event? Section E.3 Winery Uses (Special Events) reads: A facility rental event, is a type of special event and 'involves the winery, or portions thereof, being rented ...' (Pink highlighting reflects words newly added in the draft for Winery Uses.) This is also the same wordage found in the draft of 'room rental event' - 'a. The event ... involves the rental of a portion of the winery.'

This duplication of the same words in room rental event and facility rental event can lead to confusion and misunderstanding. A room rental event must be more clearly defined. A room rental event must be clearly distinguishable from a facility rental event. A facility rental event counts in determining the maximum number of 24 special events allowed per calendar year under Subsection E.3 (Special Events) Winery Uses on lots of 20 acres or more. A room rental

event would not be counted for purposes of determining the maximum number of special events allowable in Subsection E.3 (Special Events). Can this lead to confusion or lack of clarity?

What is the intended definition and purpose of 'room rental event'? Confusion vs clarity is important. Adding a new use type which is ill-defined can cause ambiguity and uncertainty.

How did the original intention transition from renting a conference room for a business meeting or holding a private gathering in one's home to renting a portion of a winery even if no amplified music or amplified speech is allowed. Amplified music or speech should not be permitted in any way either indoors or outdoors associated with a room rental. What are the County consequences if amplified music or speech do occur during a room rental event? Is a complaint first made to Code Enforcement? How can the individual making the complaint even know if this is a room rental event or a facility rental/special event? What even is the definition of event?

Length of time: how long can a 'room rental event' last? All day? All night? Ten hours? Multiple days?

Can a 'room rental' occur during the night, overnight or multiple days and nights?

Is a room rental for known local visitors only and/or paid out of town attendees? How much traffic is allowed with a room rental? What parking spaces are required to hold a room rental with 40 cars? What about traffic problems, especially if drivers are lost or do not know where they are meant to go? Forty cars arriving and leaving all at once can pose traffic problems and congestion in a small residential area.

Why so many people? An original intent raised at one of the public meetings was for 20 people in a private gathering, not 40. Forty attendees is a pretty large gathering of people in a neighborhood or residential community. Can the attendee bring a guest who waits for them? Who is counting? Does room rental need to be noticed 14 days in advance to the Ag Department and posted on the website?

How often can one hold a 'room rental event? Every day? How would that affect the local community? Wasn't the original intent for a particular, occasional, infrequent happening?

How did the simple intention of a short small gathering of friends or business associates meeting in a single room transform into a much larger definition of room rental event which now includes a portion of a winery which is ill-defined in scope, intent, size, frequency and purpose?

Does ranch marketing get the same consideration? Is a room rental event tied only to a winery property? Does a ranch marketing property not qualify for a room rental event?

This new 'room rental' use type added to the Ranch Marketing and Winery draft ordinance under revision presents a great deal of confusion and potential problems and abuse to an already

confusing and conflicting set of codes. Why aggravate already confusing concerns without a clear and precise definition of room rental event?

This use type as drafted in its present form is not ready to go forward or to be approved in the final ordinance. It needs further thought, clarity, and precise definition.

At least limit the size, scope, definition, frequency, and length of time allowed in the room rental event use type. What started as a genuine, good intention in a public comment has become too greatly expanded and possibly distorted as presently drafted. The definition of room rental now lacks clarity and definition as proposed. This is how loopholes may start and develop over time. Regulation and enforcement become that much more difficult and problematic over time.