

MUSIC ASHRAMS – Some Practical and Legal Issues

By the International Music Ashram Association, June 2020



WHAT IS A MUSIC ASHRAM?

Traditional ashrams are generally spiritual retreats within South Asian religions. There is no specific definition of a music ashram, but generally it would be a group of people living or staying together to focus on music – learning, playing, and creating - and sharing resources. Music ashram is a new term, but music camps and educational centers may have similar characteristics.

In Rishikesh, India, there is a place called the Devi Music Ashram, where this novel concept recently arose. Concerts are held there, and people come to listen to performances or participate themselves. People who visit Devi Music Ashram can stay for extended periods of time for music education and training in song, dance, instruments, vocals, or other aspects of music. Devi Music Ashram is therefore a place where people and musicians come

together to learn with, and from, each other. There is no master or guru; rather the only masters are music, nature, and knowledge.

Following the Devi Music Ashram model, music ashrams may have strong spiritual and musical teaching components, or not. Music ashrams may have strong musical performance components, or not. Regardless, music ashrams present a unique model for bringing people together and promoting musical connectedness.



WHY CREATE A MUSIC ASHRAM?

Despite an abundance of social media technologies, many people feel more disconnected from those around them than ever before. While people have the means to communicate with virtually whomever they want, whenever they want, they often lack that authentic connectedness to feel

comfortable doing so. Music ashrams give people a chance to put their phones down and experience those around them for who they really are in a spiritually and musically enriching environment. Furthermore, many musicians have sought alternative ways to work together with other musicians to create and perform music in a community given today's socio-economic and technological realities. Music ashrams could provide useful options to musicians dealing with the COVID-19 pandemic to come together, perform music, share resources, and earn a livelihood.

QUESTIONS TO ASK WHEN CREATING A MUSIC ASHRAM

If one is interested in creating a music ashram, there are certain questions to ask. First, will the music ashram be a place where people live for extended periods of time, or not? Second, will the music ashram have a musical, physical, and spiritual well-being curriculum? Third, will the music ashram be an educational establishment, a place where people meet and live together for purposes of spiritual and musical progress, or both?

There are also certain legal questions one should ask if intending to create a music ashram. First, will the music ashram be created in a residential zoning district or a commercial zoning district? There will be different noise, aesthetic, use, occupancy, and parking issues depending on where

the music ashram is located. Second, will the music ashram be a charitable, educational, and artistic establishment, or will it be a for-profit musical teaching establishment? There will be different taxation issues depending on which type of entity the music ashram chooses. Third, are there any protocols that should be followed for those setting up music ashrams or similar venues during the COVID-19 pandemic?

Provided in this booklet is information generally from the perspective of the United States about considerations for forming a music ashram. Those in other countries should make similar inquiries.



ZONING ISSUES

Once there is a clear visualization of the type of music ashram they want, the organizers should search for an appropriate area to create it. When finding a suitable area, it is advisable to consult that area's local zoning ordinances and rules. This means looking over the locality's zoning map and zoning text to determine which zoning use-district that area is located in. It is important to make sure the zoning map and zoning text are

accurate and recently updated. Another option is to receive guidance from knowledgeable professionals, government officials, or lawyers.

a. Residential Use-Districts

If the area falls within a residential use-district, there are several factors to take into account. First, which types of residential use are permitted? Is use restricted to "single-family dwellings" or does use allow for "club houses," "dormitories," "group homes," "multiple-family dwellings," or similar uses?"

Generally speaking, zoning ordinances for residential use-districts are aimed at reducing parking and traffic congestion, controlling population density, preventing noise and disturbance, and preserving the character of a traditional family neighborhood. Therefore, use of property within a residential use-district must not result in substantial noise, traffic, density of people, or disruption to the character of the neighborhood.

Noise

If planning to create a music ashram within a "residential use-district," it is advisable to review local zoning rules to determine what noise limitations exist within that area. What constitutes a noise violation differs across localities. Some localities have noise limitations that take effect at night, while others have noise limitations that take effect throughout the day. Some localities use decibel-based noise standards, while others use perception-

based noise standards. Certain localities allow for different residential use-districts to generate more noise. The noise of cars and automobiles coming to and from a property may also contribute to noise violations.

Music ashrams in residential use-districts may therefore want take precautions to mitigate the spread of noise. Some precautions might include soundproofing rooms, lowering the sounds of amplifiers or speakers, limiting the number of people performing at one time, and not having performances late into the night.



Traffic

If creating a music ashram within a "residential use-district," it is also important to review local zoning rules to determine what traffic limitations exist within that area. Some localities set a limit on the number of cars that are allowed to be parked on a street at a given time. That number is typically smaller in areas comprised of "single-family dwellings" and larger in areas comprised of "club houses,"

“dormitories,” “group homes,” or “multiple-family dwellings.” However, some localities require “club houses,” “dormitories,” “group homes,” and “multiple-family dwellings” to have parking garages or parking lots to reduce street parking.

Music ashrams in residential use-districts may therefore try to limit the number of cars that are parked on the street at a given time. In neighborhoods comprised of “single-family dwellings,” music ashrams should stagger classes and encourage students to park further away. In neighborhoods comprised of “club houses,” “dormitories,” “group homes,” and “multiple-family dwellings,” music ashrams should ensure their students have access to parking garages and nearby lots.

Occupancy

If creating a music ashram within a “residential use-district,” it is advisable to review local zoning rules to determine what occupancy limitations exist within that area. Many localities set a limit on the number of unrelated people that can occupy a residential property at a given time. Generally speaking, the number of unrelated people that can occupy “club houses,” “dormitories,” “group homes,” and “multiple-family dwellings” is larger than the number of unrelated people that can occupy “single-family dwellings.” Therefore, if someone looks to create a music ashram with many students who stay for extended periods of time, it is in their best interest to look for residential use-districts that allow for “club houses,”

“dormitories,” “group homes,” or “multiple-family dwellings.”



Aesthetics

Generally speaking, zoning ordinances permit buildings in residential use-districts to look differently from one another. However, some residential use-districts, especially those comprised of community or homeowner’s associations, require all buildings conform to a uniform appearance. If creating a music ashram in a “residential use-district” it makes sense to consult local zoning laws and regulations, along with any covenants, codes, and restrictions attached to any community or homeowner’s associations, before making elaborate modifications to a building’s appearance.

Home Occupations

Zoning ordinances typically allow for accessory or incidental uses of residential properties. Accessory or incidental uses generally consist of those uses that are dependent on or pertain directly to the principal use of a property. In some localities, an incidental use must be a use that is customarily associated with a property. A use is considered customarily

associated with property when its association is established by long-standing tradition.

Certain localities permit home occupations in residential use-districts as legitimate accessory uses. However, not all home occupations qualify as accessory uses. Some localities have held that real estate offices and beauty shops do not qualify as “professional offices” within the meaning of zoning ordinances permitting “professional offices.” On the other hand, some localities have found that offices or studios of dentists, artists, lawyers, architects, and surveyors qualify as legitimate incidental uses of residential properties. Though some localities allow for home art studios as legitimate home occupations, you should probably refrain from running a music ashram *business* in a residential use-district, because at least one locality has found that a dance business held in someone’s basement did not constitute a permissible “home occupation.”

Zoning ordinances that restrict residential use-districts to “one housekeeping unit” are sometimes inferred to prohibit boardinghouses for commercial purposes. Oftentimes, homeowner’s associations have deeds prohibiting houses from conducting themselves as boardinghouses. One locality found a home to have violated a zoning ordinance that prohibited “group houses” when a “temporary” occupant remained there for three years. If looking to start a music ashram where people can stay for extended periods of time, it is advisable to consult local zoning text to determine whether your residential use-

district permits unrelated people to stay for extended periods of time.



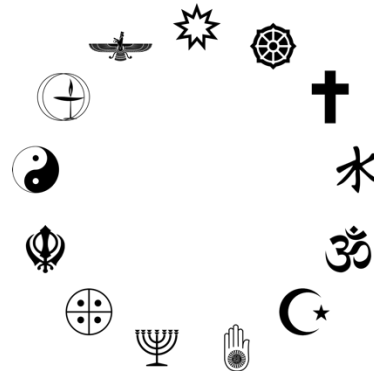
Educational Uses

Schools are generally suitable in areas zoned for residential purposes. Zoning ordinances typically permit 'schools,' 'educational uses,' or similar types of functions in designated residential districts without exception, or as special exceptions dependent upon adherence to applicable zoning ordinances.

What constitutes a "school" within zoning ordinances varies across localities. Some localities define "schools" as places where educational instruction occurs. Other localities define "schools" as institutions of traditional academic learning. Zoning ordinances generally consider "educational uses" and "schools" to be places where a broad range of topics are taught rather than a narrow set of skills. However, music education may qualify, as at least one locality has found that a dancing school for small children carried out in the basement of an apartment building by one of the building's residents qualified as a "school" within the meaning of permissible educational uses because it did not

generate a profit or otherwise show tendencies of a business.

An important factor in deciding whether an institution qualifies as a school under most zoning ordinances is whether the institution is publicly owned or operated. A school that is publicly operated may be more likely to be permitted in residential use-districts than a school that is privately operated. Furthermore, if the school is designed to make a profit, then the locality is less likely to view it as a permissible accessory use.



Religious Uses

Churches, mosques, temples, and other establishments of religious use are predominantly found within residential areas. Generally speaking, localities permit religious uses in three different ways: (1) religious uses are permitted in any district, (2) religious uses are allowed in residential districts only if they have a permit, or (3) religious uses are excluded from certain residential areas. In addition, combined religious-residential uses sometimes allow for the number of

unrelated persons residing at a specific location to permissibly exceed the occupancy limit stated in the residential zoning text.

Localities often interpret what constitutes a legitimate accessory religious use broadly. Day care centers, overnight sleeping accommodations, recreational centers, and cemeteries have been found to be legitimate accessory religious uses. If seeking to create a music ashram that has overnight sleeping accommodations, doing so in a church or other residential use-district that permits religious uses may be a good idea.

b. Commercial Use-Districts

If the area in mind falls within a commercial use-district, one must account for several factors in figuring out how to create a music ashram. First, which types of commercial use are permitted? Is the commercial district designed for offices, retail businesses, hotels, or warehouses?

Generally speaking, zoning ordinances for commercial use-districts are aimed at creating desirable business districts. This means that use of property within commercial use-districts must not result in substantial traffic, overcrowded parking lots, or interference with residential, religious, and other commercial properties. Noise, occupancy limits, and aesthetics are not as prominent issues as they are in residential use-districts.

Traffic and Parking

If planning to create a music ashram within a “commercial use-district,” it is advisable to review local zoning rules to determine what traffic and parking limitations exist in that area. Many commercial use-districts require a certain number of parking spaces per student, guest, or customer. Commercial use-districts typically require buildings in shopping centers to be at least 100 feet away from the roadway so as to reduce traffic and parking concerns. In some localities, different commercial use-districts are permitted to have different numbers of parking spaces and garages. Anyone seeking to create a music ashram within a “commercial use-district” should therefore consult local zoning rules to determine how many parking spaces are allowed in that specific area before determining how many students or guests the music ashram will admit. They should also make sure there are no traffic requirements that could be frustrated by students or guests arriving at the same time.

Accessory Uses

The right to own and operate property in a commercial use-district typically includes the right to perform accessory uses that are dependent on or pertain directly to the principle use of that property. Consequently, localities often allow owners and operators of properties in commercial use-districts to provide off-street parking. Another typically permissible accessory use is posting signs on the property to attract customers.

If the commercial property is not a hotel, zoning ordinances generally prohibit employees, students, or guests from residing at the property for extended periods of time. For example, one locality found that a restaurant violated the commercial zoning ordinance when it allowed its employees to sleep overnight at the restaurant. Therefore, if seeking to create a music ashram in a commercial use-district where students can stay for extended periods of time, it would be advisable to carefully review zoning laws and regulations to determine whether that use-district permits overnight stays.

Interference with Residential and Religious Properties

Some localities consider the very purpose of zoning to be to keep commercial and industrial districts separated from residential districts. Therefore, generally speaking, commercial districts do not abut residential districts. While exceptions are often made in areas with high-densities of population, exceptions are not often made in areas with low-densities of population.

If creating a music ashram in an area with a low-density of population, one may need to find an area that is further away from residential use-districts. If looking to create a profitable music ashram in an area with a high-density of population, it may be advisable to find an area that is closer to residential use-districts. Many localities also have restrictions on the types of commercial use that are allowed within a certain distance of residential and religious

use-districts. For example, some localities do not permit nightclubs to be within 1,000 feet of a church or single-family dwelling.

If creating a music ashram in a commercial use-district, it is advisable to check how close the commercial use-district is to nearby residential use-districts and religious establishments. After doing that, it would also be a good idea to consult local zoning ordinances to determine if there are any restrictions on the types of uses that may be associated with operating a music ashram (i.e. playing music, hosting concerts, parties, events, etc.) within that distance.

CORPORATE AND TAX ISSUES

It is also very important to determine which type of corporate entity the music ashram should be. Is the desire to create a profitable music instruction business, a charitable educational and artistic establishment, or merely a group of people who come together periodically to play or perform music? Here are a few options for setting up a music ashram in the United States. As with zoning and other rules, they will differ from state to state, and country to country.

Profitable Music Ashram Business

If someone wishes to create a profitable music ashram, it is advisable to consider consulting an attorney to help form a limited liability company (LLC) or other corporate entity. One should begin by asking the attorney about the different types of available entities (i.e. corporations,

partnerships, sole proprietorships) and their different tax implications. Music ashram creators should then determine the jurisdiction where the entity will be formed and the name of the music ashram business. Next, they should draft and file a certificate of formation or take whatever other formation steps the state or jurisdiction requires.

Charitable Educational and Artistic Establishment

If the intention is to create a charitable education and artistic music ashram, it is again important to consider consulting an attorney to help them form a tax exempt, nonprofit charitable and educational organization. Establishing a Section 501(c)(3) organization in the United States requires a lot of effort and time and meeting strict rules of the Internal Revenue Service. The music ashram creator must select the jurisdiction of incorporation and choose the name of the organization, and follow any required corporate steps in the jurisdiction. It will also be important to recruit a board of directors. They must also draft and file the appropriate documents with the proper agencies and apply for federal and state tax-exempt status in the United States. In addition, in the United States, an IRS Form 990 must be filed annually and there may be state tax exemption application or annual filings, as well.

Group of People that Come Together Periodically

If the music ashram is simply a group of

people who come together to perform music periodically, there may be no corporate or tax implications as each person would likely be considered an individual taxpayer.



COVID-19 ISSUES

There are no universally binding guidelines as to how institutions should operate during the COVID-19 pandemic. However, the Department of Labor's Occupational Safety and Health Administration (OSHA) in the United States has issued a guidance that provides recommendations to employers about how to maintain a safe and healthful workplace. Many of these recommendations are useful for learning how one can safely operate a music ashram during the COVID-19 pandemic. Of course, following the laws and regulations of the applicable jurisdiction is critical to preserving the health and safety of all involved.

OSHA has recommended that all employers take the following steps to reduce employees' risk of exposure to COVID-19: (1) develop an infectious disease preparedness and response plan, (2) prepare to implement basic infection prevention measures, (3) develop policies and procedures for prompt identification

and isolation of sick people, (4) develop, implement, and communicate about workplace flexibilities and protections, (5) implement workplace health controls, and (6) follow existing OSHA standards.

Develop an infectious disease preparedness and response plan.

Music ashrams should make sure they keep up-to-date with medical guidance from federal, state, and local agencies and incorporate this guidance into specific plans. They should also keep up-to-date with breaking news and develop contingency plans for if an outbreak occurs.

Prepare to implement basic infection prevention measures

The creator of a music ashram, along with the teachers and students who attend the music ashram, should practice good hygiene and engage in infection control behavior. Infection control behavior includes steps such as the following: handwashing frequently and thoroughly, providing alcohol-based hand rubs in case soap and running water runs out, encouraging teachers and students to stay home if they feel unwell, telling teachers and students to cough and sneeze into their elbows, establishing flexible class locations and hours to promote physical and social distancing, discouraging people from using each other's phones, instruments, and other hand-held equipment, and routinely cleaning and disinfecting instruments and other surfaces.

Develop policies and procedures for prompt identification and isolation of sick people, if appropriate

Teachers and students at music ashrams should be expected to wear face masks and self-monitor for signs and symptoms of COVID-19. Music ashram operators should also establish procedures for students and teachers to report when they feel unwell or are experiencing symptoms of COVID-19.

Procedures should be established for immediately isolating anyone who shows signs and symptoms of COVID-19. Isolation may include making that person stay in a section of the building separated from others. If a non-resident student shows signs and symptoms of COVID-19, isolation may include preventing that student from returning to the ashram until they have medically verified proof they are not contagious with COVID-19. If there are people diagnosed with COVID-19 residing at the ashram, and there are people experiencing symptoms of COVID-19 residing at the ashram, both groups should be separately isolated to limit how many possible cases translate into actual cases.

Develop, implement, and communicate about workplace flexibilities and protections

Music ashram operators should encourage sick teachers and students to stay or return home without scrutiny or stipulation. Music ashram operators should also allow resident teachers and students to go on leave and care for family members.

Implement Workplace Controls

Music ashram operators may want to install physical barriers such as sneeze guards between students and teachers. They may also want to establish alternating class days to limit the number of people that come into the music ashram at one time.

Music ashram operators should develop emergency communication plans and ensure students and teachers are provided with daily or weekly education regarding COVID-19 risk factors. They should also provide tissues, no-touch trash cans, hand soap, disinfectants, and disposable towels for teachers and students to clean surfaces and equipment. People running music ashrams should provide regularly cleaned and inspected gloves, face shields, face masks, and respiratory protection where appropriate.

Music ashram teachers who deal directly with isolated resident teachers and students infected with COVID-19 must wear respirators (specialized masks).

Follow Existing OSHA standards

OSHA’s standards contain a General Duty clause that requires employers to make sure employees are given “a place of employment, which [is] free from recognized hazards that are causing or are likely to cause death or serious injury.” Occupational Safety and Health Act of 1970, 29 U.S.C. § 654(a)(1). According to the Code of Federal Regulations, “When respirators are necessary to protect

workers, or where employers require respirator use, employers must implement a comprehensive respiratory protection program in accordance with the Respiratory Protection Standard.” 29 CFR § 1910.134. When respirators are necessary for protection, the establishment must have a written respiratory program and the program must be updated appropriately. The program must ensure respirators are regularly and appropriately cleaned, disinfected, stored, fitted, repaired, and discarded.

Since operating a music ashram would likely qualify as a “lower risk” employment environment according to OSHA’s standards, the standards that music ashram operators have to follow are likely not too demanding. However, to err on the side of caution, music ashrams may benefit from instituting a respirator program like that described above. Importantly, a situation in which respirators would be deemed necessary for protection would be when music ashram operators or teachers deal directly with isolated student residents who are infected with COVID-19.

The information in this booklet is intended to provide relevant information to those considering setting up a music ashram. The requirements will differ from country to country, state to state, or locality to locality. Seeking the advice of licensed professionals or government officials is encouraged to ensure compliance.

International Music Ashram Association