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CITY OF OAKLAND

AGENDA REPORT

TO: Oakland City Council Public Safety Committee
ATTN: Pat Kemighan, Chair
FROM: Council Member Rebecca Kaplan
DATE: April 24, 2012

RE: **AN ACTION ON ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.12, CABARETS, TO CONTINUE THE PILOT EXTENDED HOURS PERMITS PROGRAM FOR AN ADDITIONAL TWO YEARS AND TO SET OUT PROCEDURES FOR IMMEDIATE SUSPENSION OF ANY CABARET PERMIT TO PROTECT PATRONS OR THE PUBLIC.**

RECOMMENDATION

Councilmember Kaplan recommends adopting Ordinance Amending Oakland Municipal Code Chapter 5.12, Cabarets, To Continue The Pilot Extended Hours Permits Program For An Additional Two Years And To Set Out Procedures For Immediate Suspension Of Any Cabaret Permit To Protect Patrons Or The Public

EXECUTIVE SUMMARY

On April 20th, 2010 the City of Oakland adopted an amendment to The Oakland Municipal Code Chapter 5.12.04 allowing the issuance of extended hours permits to cabarets within the Central District to remain open past 2 a.m. through a two year pilot program.

Pursuant to Chapter 5.12 no patrons are allowed to remain on the premises of a cabaret after 2 a.m. The Extended Hours Pilot program adopted by the City council in 2010 allows the City Administrator's office to issue an extended hour permit for a \$5,000 annual fee to validly operating cabarets to remain open after 2 am, with the goal being to allow business patrons to leave at a time of their choosing, moderating their pace of consumption and ensuring that they are not leaving intoxicated at 2:00 a.m. and walking to their cars and driving shortly after. It also ensures that clubs and bars in the central district are not creating a mass exodus at 2:00 a.m., but instead allow for slow weaning and exodus of patrons between 2 and 4:00 am. Businesses report that no money is actually made after hours, as there are no sales, but being open after hours attracts clientele from a broader radius (San Francisco, LA, Sacramento, San Jose) which results in more sales generally for these businesses.

The legislation allows for a maximum of 10 extended hour permits, at this time there are three businesses in the Central District that have permits. The permits are revocable, and business owners are liable for excessive police costs related to enforcement. The legislation also closes a gap recently identified by OPD and staff which will allow the chief to immediately suspend cabarets for exigent circumstances until an enforcement hearing can be scheduled and held to determine if the facility is a nuisance and or danger to the community.

OUTCOME

Accepting and directing staff's recommendation will result in the extension of the after hours cabaret permit pilot program and the ability for the Chief of Police to immediately suspend a cabaret when there are exigent circumstances related to life, health, and safety concerns.

BACKGROUND/LEGISLATIVE HISTORY

On April 29, 2010 the Oakland city Council adopted Ordinance 13006 C.M.S that among other things creating a Pilot Program for Extended Hours Cabaret. The pilot program resulted in three (3) permits being issued for extended hours. Per staff the level of interest was significantly deterred by the cost of the extended hours cabaret permit. The Extended Hours Pilot program has been operating with minimal problems and with no known correlation to crime since the program was implemented.

ANALYSIS

The council offices have worked with extended hour permit holders and with OPD in examining the impacts of the program. In looking at crime data prior to the extended hour permitting and after, there is no increase in crime related to extended hours. More importantly from an economic development stand point, the extended hours help these businesses in the attraction of a regional customer base, (who can sober up before driving home) and are part of the increased visibility and presence of Oakland's Downtown as an entertainment destination.

In discussing the impacts of the extended hours program with staff and OPD the council office learned that a significant gap existed in the city's policy related to enforcement of regular cabaret. Currently staff is working on an enforcement action related to a cabaret operator in the City of Oakland. As they have proceeded with scheduling a hearing to revoke a cabaret permit the cabaret operator has been allowed to continue to operate while their due process right to a hearing was being exercised.

Unfortunately during this time period prior to conducting a hearing the operator and cabaret have continued to create a significant dangerous condition for the downtown area. The Cabaret in question has been the site of several shooting over the last several months. When staff reviewed the ordinance to determine the appropriate authority to have the cabaret permit suspended for exigent circumstances related to life, health and Safety

concerns they determined that there existed a significant gap in that the ordinance does not provide this relief to the City and or the Chief of Police for "regular cabarets" only for extended hours cabarets.

The council office is now proposing to close this gap and thereby provide a tool by which the City and Chief of Police can help immediately improve the quality of life and health and safety of Oakland residents in the downtown area.

PUBLIC OUTREACH/INTEREST

COORDINATION

The Office of the City Attorney and Special Business Permit staff have reviewed and forwarded this report.

COST SUMMARY/IMPLICATIONS

There is a minimal positive fiscal impact associated with this report, as the extended hours program will continue to generate the extended hours permit fee of \$5000.

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INTRODUCED BY COUNCILMEMBER _____

APPROVED AS TO FORM AND LEGALITY

DRAFT
CITY ATTORNEY

ORDINANCE NO. _____ C.M.S. _____

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.12, CABARETS, TO CONTINUE THE PILOT EXTENDED HOURS PERMITS PROGRAM FOR AN ADDITIONAL TWO YEARS AND TO SET OUT PROCEDURES FOR IMMEDIATE SUSPENSION OF ANY CABARET PERMIT TO PROTECT PATRONS OR THE PUBLIC

WHEREAS, cities regulate late night eating and drinking and entertainment establishments in a way that concentrates them in certain areas by market forces as well as local regulation; and

WHEREAS, the Oakland police department experiences mass exodus of cabaret patrons when large cabaret venues all close at 2 a.m. which causes traffic and crowd congestion and related public safety problems ; and

WHEREAS, the City has determined that when entertainment establishments close early, patrons often drink when the bar closes and drive shortly afterward, and when establishments remain open later patrons can leave at a time of their choosing and in this way moderate the pace of consumption; and

WHEREAS, a cabaret permit may be denied or an existing cabaret permit suspended or revoked on the basis of a disqualifying offense as defined in Oakland Municipal Code Chapter 5.12; and

WHEREAS, Oakland Municipal Code Chapter 5.12 allows no one to remain on the premises of a cabaret establishment between the hours of 2. a.m. and 6 a.m. except through the extended hour cabaret permit program; and

WHEREAS, the growing Central District cabaret entertainment sector is critical to sustaining and developing economic development and a vibrant cultural life in the city;

WHEREAS the current cabaret permit system (except for extended hours permits) does not allow for an immediate suspension of a cabaret permit when the Chief of Police or City Administrator determine the cabaret operations of a particular permittee represent danger to patrons or the general public;

WHEREAS, there have been instances where a cabaret represented a danger to its patrons and the public, but the permit could not be immediately suspended without a prior hearing, which allowed the permittee to continue to operate pending the hearing;

WHEREAS, an immediate suspension procedure already exists for extended hours permits;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND ORDAINS AS FOLLOWS:

SECTION 1. Extension of Cabaret Extended Hours Permits. Oakland Municipal Code, Title 5, Chapter 5.12, Section 5.12.040 is hereby amended to permit extend the existing Cabaret extended hour permits program for two additional years as follows:

Chapter 5.12 - CABARETS

Sections:

- 5.12.010 - Definitions.
- 5.12.020 - Permit required.
- 5.12.030 - Cabaret permit process.
- 5.12.040 - Extended hours permit process.
- 5.12.050 - Application review process.
- 5.12.060 - Regulations.
- 5.12.070 - Booths and entertainers.
- 5.12.080 - Permit fee.

5.12.010 - Definitions.

As used in this Chapter:

A. "Cabaret" shall be construed to include any place where the general public is admitted, for a fee, entertainment is provided, and alcohol is served. A place that does not charge for admission but where the general public is admitted, alcohol is served, dancing is permitted, and the venue operates past 11:00 p.m. shall also be construed as a cabaret.

B. "Disqualifying offense" means any offense which disqualifies an applicant from obtaining a permit pursuant to this Chapter or which mandates revocation of the permit if the offender already holds a permit. Disqualifying offenses are:

1. Conviction, plea of nolo contendere, plea bargain, or forfeiture pertaining to any felony offense involving the sale of a controlled substance specified in Sections 11054, 11055, 11056, 11057 or 11058 of the Health and Safety Code of the State of California;
2. Conviction, plea of nolo contendere, plea bargain, or forfeiture on a charge of committing a violent crime or a crime of dishonesty, fraud or deceit with an intent to substantially injure another.

5.12.020 - Permit required.

A. It is unlawful for any person to own, conduct, operate or maintain, or to participate therein, or to cause or to permit to be conducted, operated, or maintained, any cabaret in the City unless the cabaret has paid the annual permh fee, holds a valid permit with the

Office of the City Administrator, and has met any other permit requirements developed by the City Administrator, including but not limited to those put forth in Section 5.12.030. A proposed cabaret may be excluded from obtaining a permit for failure to meet requirements of the City building code, City fire code, City planning code, this Code and/or any violation of State or local law relevant to the operation of cabarets. Cabaret permits are not transferable. The application for such permit shall set forth the fact that the proposed location of such cabaret is not within 300 feet of any church or synagogue or any building in use as a place of public worship or school or public library. This requirement may be waived only if the City Administrator makes written findings that the cabaret will not have a negative impact on City resources, public safety and neighborhood quality of life.

B. A cabaret permit may not be issued and an existing permit may be suspended to any cabaret where any owner(s), operator(s), or other party with an interest in the cabaret has committed a disqualifying offense as defined in Section 5.12.010 and/or violated any provision of this Chapter that has resulted in a suspension or revocation of any permit issued under this Chapter, or violated a similar law in any other jurisdiction within the past five years that has resulted in a suspension or revocation of a permit under that law.

C. Notwithstanding any other provisions of this Chapter, the cabaret must comply with all applicable requirements, including but not limited to any Conditional Use Permit ("CUP") and State of California Department of Alcoholic Beverage Control ("ABC") requirements. Any ABC licensed business and/or CUP that currently does not offer entertainment (and would like to offer entertainment) shall revise its ABC license and/or CUP to include a condition that permits entertainment activities, if applicable.

5.12.030 - Cabaret permit process.

A. A business that conducts cabaret activity shall be allowed to conduct such activity under the following conditions:

- (a) The business applies for and is approved by the City Administrator for the cabaret permit;
- (b) The business maintains the permit by paying the annual fee;
- (c) The business successfully completes an annual inspection by the Fire Department;
- (d) The business does not create a public nuisance, adversely affect the health, safety, and general welfare of the public, or negatively impact City resources. A determination of such public nuisance, adverse affect, or negative impact shall be made only after a public hearing conducted according to the requirements of Chapter 5.02

The cabaret permit fee shall be specified in the master fee schedule.

B. A cabaret permit application may be denied or an existing cabaret permit suspended or

revoked on the basis of a disqualifying offense, as defined in this Chapter, or any basis for permit denial, suspension, or revocation specified in Chapter 5.02. Such denial, suspension, or revocation shall be in writing, specifying the reasons for the decision. A business whose permit is denied, suspended, or revoked may request a hearing to show cause why the permit should not be denied, suspended, or revoked. The hearing shall be conducted according to the requirements of Chapter 5.02.

C. In addition to the procedures for suspension or revocation provided for in Section 5.02.080, the permit shall be subject to suspension or revocation according to the standards of Chapter 5.02, and the owner/operator shall be liable for excessive police costs related to enforcement. The Chief of Police or the City Administrator, in his or her discretion, may immediately suspend, and recommend for revocation, such permit for any reason for which the granting of such permit might be lawfully denied, to protect the person and property of patrons of the location, or to protect the safety and welfare of the general public. Such suspension shall last no longer than is practically necessary to schedule a due process hearing on the merits of the revocation and the recommendation by the Chief of police, City Administrator or his/her designee to revoke the permit. A hearing to show cause must be held within ten business days from the date of suspension, except that such suspension cannot exceed ten days. If such suspension was the result of violent crime, narcotic related crime, melee, or gang activity emanating from or occurring on the premises the suspension shall not be removed until a final decision from the hearing officer has been rendered. All other suspensions may be removed prior to the hearing if the hearing cannot be held within ten days although the decision of the hearing officer may include additional suspension or revocation of the permit. In lieu of seeking revocation, the Chief or Police or City Administrator may seek an extended suspension period with requirements for correction or abatement of the reasons for the immediate suspension and/or additional conditions placed on the permittee.

D. In addition to suspension, revocation or denial of a cabaret permit pursuant to Subsection B., a cabaret establishment creating a public nuisance may be subject to other penalties and enforcement actions, including but not limited to civil penalties and administrative citations pursuant to Title 1 of this Code.

5.12.040 - Extended hours permit process.

A. This section provides for a pilot program to permit a limited number of cabarets to remain open for extended hours beyond the otherwise required cabaret closing time.

AB. An extended hours permit shall be required for cabaret operation between the hours of 2:00 a.m. and 5:00 a.m.

BC. The pilot extended hours permit program initially will commence on May 30, 2010 will continue until a termination date of June 30, 2014. Unless this section is amended to extend the termination date for the pilot program, all permits will expire on the termination date and no new permits may be granted or existing permits extended beyond that date. =

C. A maximum of ten extended hours permits shall be issued during the two-year-pilot program in the City's Central District (defined as within the boundaries of I-980 and Brush Street to the west; 27th Street to the north; Harrison Street/Lake Merritt and the Lake Merritt Channel to the east; and the Estuary to the south) per Oakland Planning Code Subsection 17.102.210 B.1.a.

D. The permits shall be issued at the discretion of the City Administrator or his/her designee to existing cabarets in good standing following a public hearing conducted according to the requirements of Chapter 5.02, and based on an evaluative point system that takes into consideration the operating history and business practices of the applicant, and any other factors that is deemed necessary to the peace, order and welfare of the public. Such issuance shall factor into consideration and give great weight to the recommendation of the Chief of Police or his/her designee. A proposed extended hours permittee may be denied for failure to meet requirements of the City building code, City fire code, City planning code, this Code, any violation of State or local law relevant to the operation of cabarets.

E. The City Administrator shall establish conditions of approval, including but not limited to a security plan, parking plan, and set hours of operations. Set hours may be adjusted only pursuant to 30 days notification to and approval by the City Administrator's Office.

F. Permittees must submit a monthly calendar of events to the City Administrator's Office and to the special events unit of OPD. Calendars shall be submitted 30 days in advance.

~~G. The permit shall be subject to suspension or revocation according to the standards of Chapter 5.02 and as otherwise set forth in this Chapter 5.12, and the owner/operator shall be liable for excessive police costs related to enforcement. The Chief of Police, in his or her discretion, may immediately suspend, and recommend for revocation, such permit for any reason for which the granting of such permit might be lawfully denied, to protect the person and property of patrons of the location, or to protect the safety and welfare of the general public. Such suspension shall last no longer than is practically necessary to schedule a due process hearing on the merits of the revocation and the recommendation by the Chief of Police or his/her designee to revoke the permit. A hearing to show cause must be held within ten business days from the date of suspension, except that such suspension cannot exceed ten days. If such suspension was the result of violent crime, narcotic related crime, melee, or gang activity emanating from or occurring on the premises the suspension shall not be removed until a final decision from the hearing officer has been rendered. All other suspensions may be removed prior to the hearing if the hearing cannot be held within ten days although the decision of the hearing officer may include additional suspension or revocation of the permit.~~

H. The application fee and annual fee for the extended hours permit shall be specified in the master fee schedule.

I. A business whose extended hours permit is denied, suspended, or revoked may request a hearing to show cause why the permit should not be denied, suspended, or revoked. The

hearing shall be conducted by an Administrative Hearing Officer, as defined in Chapter 5.02

5.12.050 - Application review process.

A. Application Filing. All applications for cabaret permits and extended hours permits-issued pursuant to this Chapter, including renewals, shall be filed in the Office of the City Administrator. Applicants must acknowledge receipt of cabaret operating regulations and conditions, and submit proof of fire inspection, health inspection and permit, business tax license, ABC license and conditions, and zoning clearance prior to issuance of permit. The City Administrator shall receive any fee required for the application, ensure that the application is complete, and refer the application to the Chief of Police for investigation, review and recommendation.

B. Investigation for Extended Hours Permits and New Cabaret Permit Applicants. The City Administrator shall refer the application to the Chief of Police who shall conduct background investigations on all applicants requesting extended hours permits. Where the applicant(s) is any type of association, partnership, corporation or other entity, background investigations of all publicly named or registered persons, officers, directors, managers and shareholders within those entities shall be conducted as appropriate. The applicant shall be fingerprinted and photographed and consideration shall be given to their criminal record, if any. After reviewing the information obtained, the Chief of Police shall transmit in writing any recommendation or findings from the investigation to the City Administrator and shall give particular consideration to the safety and general welfare of the public. The City Administrator shall also refer the application to other city and county agencies as appropriate and warranted to ensure compliance with existing state, county and local laws.

5.12.060 - Regulations.

It is unlawful for any person operating a cabaret under the provisions of Section 5.12.020, or any cabaret whatsoever, in the City, or any agent, employee or representative of such person to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct, or to permit such cabaret to remain open, or patrons to remain upon the premises, after 2:00 a.m. unless the cabaret has on file a current extended hours permit with the Office of the City Administrator.

5.12.070 - Booths and entertainers.

It is unlawful for any person operating a cabaret under the provisions of Section 5.12.020, or any cabaret whatsoever in the City, or any agent, employee or representative of such person, to erect, construct, maintain, or cause or permit to be erected, constructed or maintained, within such cabaret any private rooms, booths or compartments, or any closed stalls, or any alcoves of any nature, so arranged that the entire inner portion of the same shall not at all times be visible; or to permit any conduct in such place prejudicial to public morals, or to permit any entertainment in such cabaret, except that which is furnished by entertainers employed by the management of such cabaret.

5.12.080 - Permit fee.

Every person conducting, managing or maintaining the business of a cabaret in the City shall pay a permit fee specified in the master fee schedule annually in advance, and shall keep a copy of the business tax certificate issued by the Business Tax Office, together with a copy of the cabaret permit issued, and where applicable, the extended hours permit, pursuant to the provisions of Section 5.12.020, together with a copy of this Chapter, including the regulations set forth in Section 5.22.020 and incorporated in Section 5.12.060, posted in a conspicuous place in the premises maintained as such cabaret at all times during which such cabaret is being operated.

SECTION 2. Remaining Provisions Unchanged. Except as amended, all provisions, articles, sections, subsections, sentences, clauses or phrases of Oakland Municipal Code Chapter 5.12 shall remain unchanged and in full force and effect.

SECTION 3. Severability. If any article, section, subsection sentence, clause or phrase of this ordinance or exhibit is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions, which shall remain in full force and effect.

SECTION 4. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, (DATE), 20(YEAR)

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, SCHAAF,
NADEL, BRUNNER AND PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: