

CITY HALL ~~08 FEB 17 11:32 AM~~ 920 GAWA PLAZA • OAKLAND, CA 94612

NANCY J. NADEL
Councilmember
District # 3

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TO : City Council
CC : City Administrator
FROM : Councilmember Nancy Nadel
DATE : February 19, 2008
RE : **Item 14.2** - Action on a Report Regarding Conditions of Operation Negotiated between Oakland Partners Group, LLC and Councilmember Nadel For A Permit to Operate A Cabaret Under the Name 'Club O' (Application Submitted To Operate a Cabaret Under The Name 'Tycoons'), Located At 1731 San Pablo Avenue, and Request to Adopt a Resolution Directing the City Administrator, Or Her Designee, To Re-Evaluate The Permit Application In Light of The Negotiated Conditions of Operation and the Recent Revisions to Ordinance No. 12855, C.M.S., Which Granted Authority to the City Administration for Discretion in Permitting Cabarets

Dear Council President de la Fuente and Councilmembers:

On April 17, 2007, the City Council heard the appeal of the Hearing Officer's decision to deny Oakland Partners Group's cabaret permit application. One of the bases for the denial was the presence of a school within 300 feet of the proposed cabaret. Oakland Municipal Code (OMC) section 5.12.020 prohibited, without providing for a waiver, permitting cabarets within 300 feet of public schools, public libraries, and places of worship. The Council requested staff propose an amendment to this section that would provide a reasonable basis for permitting under such conditions.

On January 15, 2008, the City Council amended OMC section 5.12.020 to allow the City Administrator discretion in permitting cabarets within 300 feet of schools, libraries, and places of worship upon written findings that the cabaret will not have a negative impact on City resources, public safety and neighborhood quality of life.

Since the proposed cabaret is in my district, I met with the applicant to determine whether conditions could be established that would overcome the Hearing Officer's other objections (explained below). On December 6, 2007, I met with Zach Wasserman, attorney for the applicant, who agreed on behalf of his client to operate the club with a primarily Latin format, and to obtain a Special Event permit prior to conducting any event featuring a rap or hip hop venue. On December 19, 2007, Mr. Wasserman submitted to the Hearing Officer a letter confirming his clients' agreement to these conditions.

In combination with the OMC amendment and altered conditions since the original application (described below), the agreement reached with the applicant resolves the additional issues that resulted in the Hearing Officer's original denial of the cabaret permit.

Item _____
City Council
February 19, 2008

I respectfully request that the City Council direct the City Administrator, or her designee, to re-evaluate the permit application in light of the information above, and to prepare written findings, as required by amended OMC section 5.12.020, regarding whether the proposed cabaret will have a negative impact on City resources, public safety and neighborhood quality of life. Should the City Administrator, or her designee, find that the proposed cabaret will not have a negative impact, and if the other requirements for issuing a cabaret permit are met, the City Administrator will then issue a cabaret permit, conditioned upon the agreement reached with the applicant regarding conditions of operation, as well as the City's standard cabaret conditions.

BACKGROUND/KEY ISSUES AND IMPACTS

In addition to the prohibition of cabarets within 300 feet of public schools, public libraries, and places of worship, the Hearing Officer denied Club O's cabaret permit application for the following reasons:

- (1) Target Market and Music Format
- (2) Large Occupant Load
- (3) Non-transferability of cabaret permits
- (4) Cabarets not allowed to operate after 2:00 a.m.
- (5) Requirement for Conditional Use Permit to sell alcoholic beverages
- (6) Applicant's history
- (7) Factors that created an unacceptable risk to peace, order, and public safety
- (8) Geographic Location
- (9) Police Resources

Resolution regarding reasons (2) and (8):

A significant component of the "Large Occupant Load" and "Geographic Location" factors was the existence within short walking distance of another cabaret, '@17th.', of similar size and target market. Following the denial of Club O's permit application, on August 8, 2007, two people were murdered outside of @17th, and the cabaret closed to restructure. The City subsequently conducted a hearing on @17th's cabaret permit, and suspended @17th's cabaret permit. The City then met with @17th and established several conditions for their re-opening. The conditions have not been met and @17th remains closed. The closure of @17th resolves the concerns regarding the impact of the combined operations of the two clubs.

Resolution regarding reason (3):

Originally, Oakland Partners Group requested transfer of the cabaret permit previously issued to Sweet Jimmie's at the same location. Permits issued under Title 5 of the OMC, including cabaret permits, are not transferable. However, this is no longer an issue, as Oakland Partners Group applied independently for its own cabaret permit.

Resolution regarding reason (4):

In response to the Hearing Officer's concern that the proximity of @17th and the proposed Club O would mean that well over 1000 people would be exiting the two clubs simultaneously, creating an unmanageable situation for the Oakland Police Department, Oakland Partners Group suggested that they could remain open after 2:00 a.m., thus spreading out the dispersal of the crowd. OMC Section 5.12.030 requires cabarets to cease operation and for patrons to exit the premises between the hours of 2:00 a.m. and 6:00 a.m. Staff proposed amending this section, and the proposal was rejected by the Public Safety Committee of the City Council.

However, due to the closure of @17th, the exiting crowd size will be cut by half, a much more manageable size for OPD. Therefore, the need to stay open past 2:00 a.m. or to stagger hours in some other fashion no longer exists.

Resolution regarding reason (5):

When applying for a cabaret permit, Oakland Partner Group planned to operate under the ABC license issued to Sweet Jimmie's, which was a license for a full service restaurant. Sweet Jimmie's was to continue operating the restaurant, and Club O was to operate the cabaret only. The problem that this created for the City was that Club O, a separate business entity from Sweet Jimmie's, would be selling only alcohol, and City law requires businesses that are not restaurants but that sell alcohol obtain a Conditional Use Permit to do so.

Since the denial of the permit, the restaurant has ceased operation, and Oakland Partner Group has stated that they will be operating the restaurant as well as the cabaret. If this is the case, they will need to obtain a valid ABC license or have the one issued to Sweet Jimmie's transferred to them, but they will not need to obtain a Conditional Use Permit.

Resolution regarding reasons (1), (6) and (7):

One of Oakland Partner Group's principals, Ed Pope, had previously operated a cabaret in San Jose. During the time that the San Jose cabaret operated with a hip hop format, there were numerous reports of violence and need for police intervention, as documented by San Jose Police Reports on 13 incidents over 10 months that required police services to break up fights, disperse crowds and assist battery victims. The format proposed for Club O by Oakland Partner Group appeared to be similar enough to the situation in San Jose that it was cause for concern.

Mr. Pope stated that during that time the club was being managed by another person and when he realized the problem, he took control and changed the format to a Latin format. Mr. Pope claimed there were no problems after this change, and there was no information from the San Jose Police Department to contradict this.

Factors that created an unacceptable risk to peace, order, and public safety included target market and music format. Oakland's experience has been that the young market planned to be targeted by Oakland Partner Group combined with the popularity of the proposed music format draws not only large crowds of patrons but also large crowds of other young people who may exceed the occupant load, may be too young to be admitted, do not have the funds, or for any number of reasons do not enter the venue. These young people, who may more than equal the number of patrons at popular events, congregate outside the club and create a crowd control problem for OPD. Additionally, numerous incidents of violence have been recorded in these situations at the location proposed for Club O, at the nearby @17th, and at other similar clubs throughout the City.

The change to a Latin format, agreed upon by Oakland Partners Group, will attract an older audience and, at least in Oakland's experience, fewer people who will hang out outside the club.

Additionally, the agreement by the applicant to obtain a Special Event Permit prior to conducting a rap, hip hop, or hyphy event, ensures that OPD will be able to provide the additional police resources that have been found necessary for both the protection and control of the large crowds of young people drawn to these popular venues.

Resolution regarding reason (9):

The current understaffing of the Oakland Police Department was a major factor in the denial of the permit. The applicant indicated willingness to pay for the police resources needed to protect the patrons and the business, maintain control of the streets, and disperse the patrons in an orderly fashion. Unfortunately, the City could not guarantee the availability of these resources on a regular basis. The Special Events Unit of OPD has conveyed to the City Administrator's Office that their experience has been that additional police resources are *not* typically needed for Latin format events. The applicant's agreement to obtain a Special Event Permit before conducting rap, hip hop, and hyphy events will provide the Special Event Unit with the opportunity to evaluate the expected crowd size and the experience of other cities with the planned artist or entertainers and to assess whether additional police are needed and available.

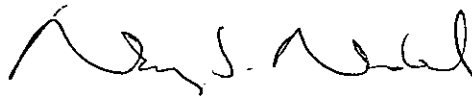
CONCLUSION

The action of the Council in amending the OMC section that prohibited cabarets within 300 feet of a school allows this application to be re-evaluated to determine whether the cabaret will have a negative impact on City resources, public safety and neighborhood quality of life. If not, the Hearing Officer will make written findings to that effect, and that will not be a basis for denial of the application.

The agreement reached between Oakland Partners Group and my office addresses the Hearing Officer's major objections to the application. The agreement shall be incorporated into Conditions of Operation for any permit issued for Club O. Any remaining issues, such as parking, will also be the subject of Conditions of Operation.

Therefore, I respectfully request that the City Council adopt a resolution directing the City Administrator, or her designee, to re-review the permit application in light of the negotiated conditions of operation and the recent revisions to Ordinance No. 12855, C.M.S., granting authority to the city administration for discretion in permitting cabarets, for completion of the permitting process.

Respectfully submitted,



Nancy J. Nadel, Councilmember
District 3

Scott C. R. Jackson
City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

Introduced by Councilmember Nancy J. Nadel

Resolution Directing the City Administrator, Or Her Designee, To Re-Evaluate The Permit Application Of Oakland Partners Group LLC to Operate a Cabaret Under the Name 'Club O' (Application Submitted to Operate a Cabaret Under the Name 'Tycoons'), Located At 1731 San Pablo Avenue, In Light of The Negotiated Conditions of Operation and the Recent Revisions to Ordinance No. 12855, C.M.S., Which Granted Authority to the City Administration for Discretion in Permitting Cabarets

WHEREAS, on April 17, 2007, the City Council heard the appeal of the Hearing Officer's decision to deny Oakland Partners Group's cabaret permit application, based in part because of the presence of a school within 300 feet of the proposed cabaret; and

WHEREAS, on January 15, 2008, the City Council amended OMC section 5.12.020 to allow the City Administrator discretion in permitting cabarets within 300 feet of schools, libraries, and places of worship upon written findings that the cabaret will not have a negative impact on City resources, public safety and neighborhood quality of life; and

WHEREAS, Oakland Partners Group, LLC has agreed to certain conditions of operation, namely, to operate the club with a primarily Latin format, and to obtain a Special Event permit prior to conducting any event featuring a rap or hip hop venue; and

WHEREAS, in combination with the OMC amendment and altered conditions since the original application, the agreement reached with the applicant resolves the additional issues that resulted in the Hearing Officer's original denial of the cabaret permit; now therefore be it

RESOLVED, that the City Council direct the City Administrator, or her designee, to re-evaluate the permit application in light of the OMC amendments, the altered conditions, and the negotiated agreement with the applicant, and to prepare written findings, as required by amended OMC section 5.12.020, regarding whether the proposed cabaret will have a negative impact on City resources, public safety and neighborhood quality of life; and be it

FURTHER RESOLVED, that if those written findings reveal that the proposed cabaret will not have a negative impact on City resources, public safety and neighborhood quality of life, and if the other requirements for issuing a cabaret permit are met, the City Administrator will then issue a cabaret permit, conditioned upon the agreement reached with the applicant regarding conditions of operation, as well as the City's standard cabaret conditions.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California