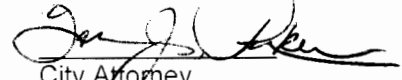


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OAKLAND

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APPROVED AS TO FORM AND LEGALITY


City Attorney

INTRODUCED BY COUNCILMEMBERS NADEL AND KAPLAN

ORDINANCE ~~NO. 13006~~ C.M.S.

AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.12, "CABARETS" TO 1) UPDATE THE DEFINITION OF A CABARET, 2) STREAMLINE THE CABARET PERMIT PROCESS, AND 3) ALLOW 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

WHEREAS, the definition of a "Cabaret" in Oakland Municipal Code Chapter 5.12 should be amended to address the current range of cabaret activities in Oakland; and

WHEREAS, Oakland Municipal Code Chapter 5.12 currently requires all cabarets to obtain a cabaret permit to operate; and

WHEREAS, the primary purpose of cabaret permits is to establish conditions that ensure the cabaret does not become a public nuisance or a health and safety concern; and

WHEREAS, a cabaret that becomes a public nuisance or a health and safety concern, can be referred to the Nuisance Abatement Division, which did not exist when the cabaret ordinance was adopted; and

WHEREAS, in addition to referring nuisance cabarets to the Nuisance Abatement Division, the City can still seek other remedies including but not limited to civil and criminal enforcement action

WHEREAS, all permitted cabarets will be given and must abide by a uniform set of cabaret operating conditions; and

WHEREAS, a proposed cabaret permittee may be excluded from obtaining a permit for failure to meet requirements of the Oakland Building Code, Oakland Fire Code, Oakland Planning Code, Oakland Municipal Code and/or any violation of state or local law relevant to the operation of cabarets; and

WHEREAS, new alcohol establishments and alcohol license transfers are required to go through California Alcohol Beverage Control's noticing requirements and acquire approvals from Oakland's Planning Department, including a Conditional Use Permit if necessary; and

WHEREAS, the ABC and planning and zoning processes will afford Oakland residents an opportunity to oppose/protest such alcohol establishments prior to cabaret application; 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 OMC Chapter 5.12; and

WHEREAS, OMC Chapter 5.12 currently allows no one to remain on the premises of a cabaret between the hours of 2 a.m. and 6 a.m.; and

WHEREAS, the Oakland Police Department experiences mass exodus 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 identified situations in which allowing cabaret patrons to remain after 2 a.m. may reduce nuisance problems associated with mass exiting of crowds and with drunk driving; and

WHEREAS, the San Francisco Entertainment Commission states 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 this may moderate the pace of consumption; and

WHEREAS, cities regulate late night eating and drinking and entertainment establishments in various ways, and in most cities, the most intensive uses have become concentrated in certain areas, by market forces as well as local regulation; and

WHEREAS, the Oakland Planning Code Chapter 17.102.210 Section B1a defines the geographic boundaries of a "Central District" for the City; and

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

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. It is the intent of the City Council in enacting this ordinance, to encourage responsible businesses in the development of Oakland's cultural and entertainment sectors, while providing for the safety of Oakland residents and enabling the Oakland Police Department to be effective in preventing violence and maintaining the peace.

SECTION 2. The City Council finds and determines the forgoing recitals to be true and correct and hereby makes them a part of this ordinance.

SECTION 3. The City Council finds and determines that the adoption of this Ordinance is exempt from CEQA under Sections 15061(b)(3) of the State CEQA Guidelines and authorizes the filing of a Notice of Exemption with the Alameda County Clerk.

SECTION 4. Oakland Municipal Code Chapter 5.12 is hereby amended to read as follows; additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed:

Chapter 5.12 CABARETS

5.12.010 Definitions.

5.12.020 Permit required.

5.12.030 Cabaret Permit process

5.12.040 Extended Hours Permit Process

5.12.02550 Application review process.

5.12.03060 Regulations.

5.12.04070 Booths and entertainers.

5.12.05080 License tax 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, ~~where entertainment is furnished by or for any patron or guest present upon the premises, including but not limited to singing, vaudeville and dancing, and where liquid refreshments or foods are sold; provided, however, that any place where entertainment is furnished by the mechanical or electronic reproduction of pre-recorded music or radio broadcasts or by motion pictures,~~ shall not be construed to be a cabaret within the meaning of this section unless dancing privileges are afforded in connection therewith 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. Violation of any provision of this chapter that has resulted in a suspension or revocation of any permit issued under this chapter, or violation of a similar law in any other jurisdictions within the past five years that has resulted in a suspension or revocation of a permit under that law;~~
- ~~3.~~ 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 ~~there exists a valid permit therefor, granted and existing in compliance with the provisions of Chapter 5.02. The application for such permit shall set forth, in addition to the requirements specified in Section 5.02.020, the fact that the proposed location of such cabaret is not within three hundred (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. Public notice shall be given as provided in Section 5.02.050, and the investigating official referred to in Section 5.02.030 to whom the application shall be referred, shall be the Chief of Police. In recommending the granting or denying of such permit, the Chief of Police, and in granting or denying the same, the City Administrator, shall give particular consideration to the peace and order and moral welfare of the public. the cabaret has paid the annual permit 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 5.12.030. A proposed cabaret may be excluded from obtaining a permit for failure to meet requirements of the Oakland Building Code, Oakland Fire Code, Oakland Planning Code, Oakland Municipal 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 three hundred (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 shall~~ 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 Ordinance, 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.

[5.12.025 – Application Review Process has been renumbered and moved to 5.12.050]

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 OMC 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 OMC Chapter 5.02.

C. In addition to suspension, revocation or denial of a cabaret permit pursuant to OMC section 5.12.030 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 the OMC.

5.12.040. Extended Hours Permit Process.

- A. An Extended Hours Permit shall be required for cabaret operation between the hours of 2:00 a.m. and 5:00 a.m.
- B. The pilot Extended Hours Permit program will commence on May 30, 2010, or as soon as practicable thereafter, with all applications due by June 11, 2010. Following the public hearings process, all permits will be issued on July 30, 2010 for an 18 month period.
- 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 Chapter 17.102.210 Section B1a.

- 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 Oakland Building Code, Oakland Fire Code, Oakland Planning Code, Oakland Municipal 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 thirty 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 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 10 business days from the date of suspension, except that such suspension cannot exceed 10 days. ~~If it is not practical to conduct an administrative hearing within the required time, the suspension must be lifted until such time as hearing can be held.~~ 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 10 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.

5.12.02550 Application review process. [This section was in 5.12.025; its has been renumbered 5.12.050]

- 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.

5.12.03060 Regulations. [This section was in 5.12.030; it has been renumbered 5.12.060]

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 otherwise~~, or to permit such cabaret to remain open, or patrons to remain upon the premises, after 2 a.m. unless the cabaret has on file a current Extended Hours Permit with the Office of the City Administrator.

5.12.04070 Booths and entertainers. [This section was in 5.12.040; it has been renumbered 5.12.070]

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.

5.12.05080 ~~License tax~~ Permit Fee. [This section was in 5.12.050; its has been renumbered 5.12.080]

Every person conducting, managing or maintaining the business of a cabaret in the city shall pay a license permit fee of three hundred dollars (\$300.00) specified in the Master Fee Schedule annually in advance, and shall keep a copy of the license 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 5.12.0360, posted in a conspicuous place in the premises maintained as such cabaret at all times during which such cabaret is being operated.

SECTION 5. 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 6. 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 7. 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, MAY 4 2010, 20

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, ~~DE LA FUENTE~~, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and
PRESIDENT BRUNNER - 7

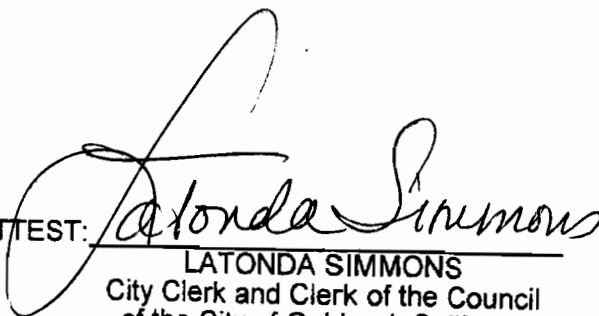
NOES- 0

ABSENT- 0

ABSTENTION- 0

EXCUSED - DE LA FUENTE - 1

ATTEST:


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

Introduction Date: APRIL 20, 2010

DATE OF ATTESTATION: May 21, 2010