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CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND
CALIFORNIA 94612

CITY COUNCIL

TEL (510) 238-7003
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April 13, 2010

Public Safety Committee
Oakland City Council
Oakland, California

RE: A) Adopt 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; And

B) Adopt An Ordinance Amending Ordinance Number 12809 C.M.S. (Master Fee Schedule), As Amended, To Set And Change Fees For Annual Cabaret Permits And Extended Hours Cabaret Permits

This is a supplemental report to the Cabaret Amendments Proposal continued from the October 27, 2009 Public Safety Committee.

Committee members asked that the proposed cabaret ordinance changes be brought back with:

1. A new definition of what constitutes a "cabaret" to replace the definition currently in the Oakland Municipal Code
2. More details on the small cabaret registration process
3. More details on the selection process and criteria for Extended Hours Permits with input from the Oakland Police Department
4. Discussion of the timeline of the Extended Hours Permit program
5. A sliding scale fee for Extended Hours Permits based on cabaret size

1. Cabaret Definition

The revised ordinance redefines a “cabaret” as

“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 12:00 a.m. shall also be construed as a cabaret.”

This new definition addresses several Council Members concerns that restaurants with live music as an accompaniment to the dining experience should not be deemed cabarets. The new definition also speaks to the public safety impetus for creating an administrative cabaret process in the first place. The new definition encompasses establishments at a higher risk for public safety concerns – those that charge cover for entertainment and serve alcohol, and businesses that admit the general public, stay open past midnight, provide entertainment, allow dancing and serve alcohol.

2. Cabaret Permit Process

The cabaret amendments proposed in October 2009 would have created an exemption for establishments with a less than 50 occupancy rate from having to obtain a cabaret permit to have live and/or amplified music. We proposed that the City would create a separate, less costly, registration process for these “small cabarets.”

After the October 27, 2009 meeting, sponsors of these amendments received a proposal from the Office of the City Administrator to streamline the cabaret permit process for *all cabarets* and remove the pre-hearing requirement for obtaining a cabaret permit.

Under the proposed changes, all applicant cabarets would be given and must abide by a general set of cabaret operating conditions as specified in *Attachment A*. An applicant may be excluded from obtaining a cabaret permit for failure to meet requirements of the Oakland Building Code, Oakland Fire Code, Oakland Police Code, and/or any violation of state or local law relevant to the operation of cabarets. All applicants must submit proof of Fire Inspection, Health Inspection and permit, business tax license, ABC license and conditions, and zoning clearance. The City Administrator’s Office will ensure that the application is complete, and refer the application to the Chief of Police for investigation, review and recommendation. Those that fail to abide by the cabaret operating conditions or any other requirements listed above would be required to enter into agreements with the Nuisance Abatement Division that impose specific conditions aimed at abating problem activity at the cabaret and/or face enforcement actions including but not limited to civil and criminal sanctions.

Rationales for these changes to the cabaret permit process are:

- All new alcohol establishments and alcohol license transfers are required to go through California Alcohol Beverage Control noticing to the community and will have gone

through the City's Planning and Zoning Division to determine if Conditional Use Permit hearings are required due to zoning regulations. The ABC and planning and zoning processes will afford Oakland residents opportunities to oppose such alcohol establishments prior to cabaret application.

- The primary purpose of cabaret permits is to establish conditions that ensure the cabaret does not become a nuisance or a place of violence. These goals can be achieved by 1) referring nuisance and criminal activity to the City's Nuisance Abatement Division, which did not exist when the cabaret ordinance was adopted, and 2) seeking other remedies including but not limited to civil and criminal enforcement action.
- There is a benefit to requiring cabarets to enter into agreements with the Nuisance Abatement Division because the property owner, as well as the business operator, must sign and be bound by the agreement. This gives the City additional leverage in its oversight for cabarets.
- The City wishes to encourage, not discourage, the growth of nightlife and entertainment venues, which contributes significantly to the economic development of Oakland.

In keeping with our original intention to decrease the cost of obtaining a cabaret permit for small businesses, we are also recommending a scaled cabaret permit fee. Cabarets with under 50 occupancy rate will pay \$250 annually and cabarets with occupancy loads over 50 will pay \$750 annually for their permit.

3. *Extended Hours Permits: Selection Process and Criteria*

The cabaret recommendations presented in October 2009 would allow existing cabarets in good standing with sustained histories of responsible business practices to apply for Extended Hours Permits to operate beyond 2:00 a.m. through a two-year pilot program. A maximum of ten Extended Hours Permits would be issued during the pilot program.

Through discussions with OPD and the City Administrator's office, we make the following clarifications and changes:

- Extended Hours Permits would allow operation between the hours of 2:00 a.m. and 5:00 a.m.
- Extended Hours Permits will only be issued for cabarets 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.
- The Special Business Unit of the Office of the City Administrator along with OPD (the Chief of Police or designee) will review and approve applications for Extended Hours Permits.
- Applicants must go through a public hearing process and will also be evaluated based on a point system that takes into consideration the operating history and business practices

of the applicant, and any other factors deemed necessary to the peace, order and welfare of the public.

- A proposed extended hours permittee may be excluded from applying for failure to meet requirements of the Oakland Building Code, Oakland Fire Code, Oakland Police Code, and/or any violation of state or local law relevant to the operation of cabarets.
- The City Administrator will 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 with thirty days notification to and approval by the City Administrator's Office.
- Permittees must submit a monthly calendar of events to the City Administrator's Office and to the special events unit of OPD. Calendars must be submitted thirty days in advance.
- The extended hours permit will be subject to suspension or revocation according to the standards of Chapter 5.02 of the OMC, and the owner/operator shall be liable for excessive police costs related to enforcement.
- The Chief of Police may revoke or suspend such permit for any reason for which the granting of such permit might be lawfully denied, to protect the person and property of patrons at the location, or to protect the safety and welfare of the general public.
- 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 City reserves the latitude to establish additional permit conditions as the pilot program evolves.

4. *Extended Hours Permits: Timeline*

The Extended Hours Permit pilot program shall commence on May 31, 2010 with all applications due by June 11, 2010. Following the public hearings process, all permits will be issued on July 30, 2010 for an eighteen month period ending January 31, 2012. After twelve months of operation, staff will begin evaluation of the pilot program. While evaluation takes place, extended hours permit holders can continue late night operations for another six months in order to prevent unnecessary business disruptions. Evaluation of the first year of the Extended Hours Permits pilot program will be brought to City Council by the end of October 2011.

5. *Extended Hours Permit: Fee Structure*

The revised Master Fee Schedule amendment specifies a \$1,000 application fee for the Extended Hours Permit, with a permit fee starting at \$2,000 for establishments with occupancy rates of under 250 people, and increases in \$500 increments for every 50 person increase in occupancy load, up to \$5,000. The permit will be valid for the eighteen month duration of the program. The permit fee can be paid in six month installments with the first payment made at the time of permit issuance.

FISCAL IMPACT

The cabaret permit renewal fee has remained at \$300 since at least 1972 and no longer covers staff costs. We propose to increase the annual cabaret permit fee to \$750 for cabarets with an over 50 occupancy rate. We also propose that "small cabarets" with under 50 occupancy pay an annual permit fee of \$250. There are currently 53 permitted cabarets operating in the City and none of these establishments would qualify for the small cabaret permit fee. There are between ten to fifteen currently permitted cabarets that would no longer be deemed a cabaret under the new proposed definition. Taking this into account along with the proposed fee changes, the City would receive at least \$16,000 annually in additional revenue from "regular" cabarets. In addition, the City would receive \$250 annually from each "small cabaret" permit issued.

If the maximum ten Extended Hours Permits are granted through the pilot program, the City could generate up to \$60,000 in additional revenue. Staff time devoted to this pilot program would likely be offset by the removal of the pre-hearing requirement for obtaining a cabaret permit.

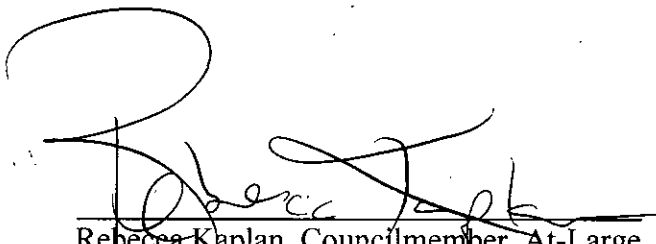
ACTION REQUESTED OF THE CITY COUNCIL

Councilmembers Nadel and Kaplan ask that the City Council:

- A) Adopt 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; And
- B) Adopt An Ordinance Amending Ordinance Number 12809 C.M.S. (Master Fee Schedule), As Amended, To Set And Change Fees For Annual Cabaret Permits And Extended Hours Cabaret Permits

Respectfully submitted,


Nancy Nadel, Councilmember, District 3


Rebecca Kaplan, Councilmember, At-Large

Prepared by:
Xiaojing Wang
Policy Analyst for Councilmember Nadel

Item: _____
Public Safety Committee
April 13, 2010

**CABARET PERMIT
CONDITIONS OF APPROVAL**

1. Permittee shall not serve alcohol to any person who appears intoxicated or to minors. Further, the applicant shall take action to ensure that no alcoholic beverages are taken outside of the premises of the cabaret.
2. The occupancy of the premises shall not exceed the maximum occupancy level established and set forth in the Public Assembly Permit.
3. Permittee shall comply with all General Use Permit Criteria, Special Use Permit Criteria, and Conditions of Approval of Conditional Use Permit Number _____.
4. Any and all exterior remodeling, including exterior painting shall be approved by the Director of City Planning prior to the issuance of any building permits or the installation of any exterior remodeling. All exterior modifications or painting shall be of an architectural and visual quality and character that will harmonize and enhance the surrounding area.
5. Permittee shall not expand the premises either horizontally or vertically
6. Permittee shall post on the exterior of the cabaret, in a location that is clearly visible to people outside, a sign with a phone number to call to register complaints. This phone must be staffed during all operating hours and must be capable of taking messages during non-operating hours. Permittee shall maintain a log of the complaints listing date, time, nature of complaint, and, when possible, name of complainant. Unless complainant is anonymous or leaves no contact information, Permittee shall respond to after-hours complaints within 24 hours.
7. Permittee shall meet with representatives from any neighborhood associations or group if requested, and shall meet on at least a quarterly basis with the Neighborhood Crime Prevention Council for the area that includes the cabaret premises. Permittee shall report to the City Administrator's Office regarding discussions involving the cabaret at such meetings and action taken to resolve any complaints.
8. Within 30 days of the effective date of these conditions, Permittee shall submit to the City Administrator's Office a program to discourage loitering and to reduce littering, and the applicant shall put such program into effect. The litter control plan shall include at least the following:
 - a. The daily sweeping down, and washing as needed, of the frontage of the premises.
 - b. The daily collection of alcoholic beverage and fast food litter in the area immediately in front of and adjacent to the premises. All specifically designated off-street parking areas shall be kept litter free.
 - c. A plan to minimize potential nuisance effects created by exiting patrons.
9. Permittee shall, either jointly or severally with neighboring merchants, adequately illuminate the exterior of the premises. This lighting shall not disturb adjacent residents' quiet enjoyment of their residences.

10. Unless exempted by the Oakland Police Department, Permittee shall post **No Loitering** signs that cite the applicable City of Oakland regulation or law.
11. Permittee or her/his designee shall take reasonable action to actively enforce the **No Loitering** plan inside and outside of the premises.
12. Permittee shall provide adequate security, at no less than a ratio of one security staff person to every 50 patrons, to ensure the safety of patrons and the general public, and to secure the premises of the cabaret and adjacent businesses. Security staff shall be holders of valid California guard cards and Oakland watchman's permits. Should excessive Oakland police resources be required to maintain order in or around the cabaret, permittee shall be liable for the cost of these services.
13. Permittee shall keep noise within the establishment and on the outdoor patio area, when it is being accessed by cabaret patrons, at a level that will not adversely affect other businesses or residents in the surrounding area.
14. Permittee shall limit the cabaret activities to the following hours:
_____ (not before 6:00 a.m.) until _____ (not after 1:30 a.m. the following day)
If more restricted operating hours were established in the conditional use permit issued by the City Planning Commission and Zoning Division, such hours shall supersede the hours cited above. The violation of the cabaret permit condition pertaining to operating hours is an infraction, and a \$100.00 fine is assessed for this violation.
15. At least one week prior to the end of each month Permittee shall submit to the Special Events unit of the Oakland Police Department, , via fax at 510-777-8979 unless other arrangements are made, the schedule of planned cabaret activities for the following month. As soon as possible after scheduling, Permittee shall fax notice of any activities that are scheduled subsequent to submission of the monthly activities schedule.
16. Should permittee plan an activity that would qualify as a Special Event, as defined by OMC chapter 9.52, either through their own scheduling or through that of a promoter, cabaret will provide at least 3 weeks notice to the OPD Special Events Unit. OPD will confer with permittee regarding the size and demographics of the expected crowd, in regard for the need for private security, OPD resources, traffic control, and crowd control.
17. Permittee shall not admit minors on the premises when conducting cabaret activities.
18. Permittee shall abide by and enforce the California state laws and Oakland Municipal Code sections pertaining to smoking and tobacco.
19. Permittee shall not lease the premises to others for the purposes of conducting cabaret activities without first acquiring a Special Events permit and any other permits that may be necessary for the specific activity. Permittee shall notify the City of any such events according to term numbers 15 and 16.
20. Permittee shall comply with all applicable state and local laws and with the terms of permittee's ABC license.
21. The City Administrator's Office shall retain the authority to suspend or revoke this permit or impose additional conditions after notice and public hearing and a finding that:
 - a. Permittee has violated any of the conditions contained herein.
 - b. The operation of the cabaret creates a public nuisance.

- c. Violations of other applicable state laws and City regulations exist, including the Zoning Regulations and the Building Code.
 - d. The operation of the business has adversely affected police calls-for-service in the immediate area. This will be judged by reviewing calls-for-service to the level of calls in a six-(6) month period prior to the granting of this permit. Permittee understands that the City may, at its discretion, invoice for excessive police services.
 - e. The operation of the business creates a risk to public safety.
- 22. Whenever reference is made in these conditions to the City or City Administrator, the Hearing Officer shall be responsible for the City or City Administrator performing the actions required.
 - 23. Whenever reference is made to any City Official in these conditions, that City Official may appoint a designee.
 - 24. The City Administrator's Office shall review every ongoing permit every two years or on request to ensure compliance with the conditions contained therein. The primary basis for the revocation or suspension of the ongoing permit is whether the cabaret activities create substantial adverse impacts on the peace, order, and welfare of the public or police resources.
 - 25. The applicant shall surrender the permit to the City Administrator's Office within seven (7) days of suspension or revocation thereof.
 - 26. The conditions contained herein maybe added to, changed or modified by the City Administrator or his designee in response to findings made regarding complaints from neighboring residents, City agencies or the general public.
 - 27. The applicant shall defend, indemnify, and hold harmless the City of Oakland, or its agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City or its agents, officers, or employees to attack, set aside, void, annul, this approval by the City. The City may elect, in its discretion, to participate in the defense of any action.

Cabaret Permittee

Administrative Hearing Officer

Date

Date

2010 APR -1 PM 6:23

APPROVED AS TO FORM AND LEGALITY

DRAFT

City Attorney

INTRODUCED BY COUNCILMEMBERS NADEL AND KAPLAN

ORDINANCE NO. _____ 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 Police 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 will be required to go through California Alcohol Beverage Control noticing to the community and will have gone through zoning and planning to determine if they are required to go through the City's Conditional Use Permit hearings because of zoning regulations; 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 12:00 a.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. 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 Police 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 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.

[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 and the Chief of Police 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. A proposed extended hours permittee may be denied for failure to meet requirements of the Oakland Building Code, Oakland Fire Code, Oakland Police 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 revoke or suspend 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.
- 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, _____, 20____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

FILED
OFFICE OF THE CITY CLERK
OAKLAND

APPROVED AS TO FORM AND LEGALITY

DRAFT

City Attorney

10 APR -1 PM 3:45

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING ORDINANCE NUMBER 12809 C.M.S. (MASTER FEE SCHEDULE), AS AMENDED, TO SET AND CHANGE FEES FOR ANNUAL CABARET PERMITS AND EXTENDED HOURS CABARET PERMITS

WHEREAS, the City charges an annual fee to register the operation of cabarets in Oakland; and

WHEREAS, that fee may increase with inflation and may vary with other factors; and

WHEREAS, the appropriate ordinance for variable fees is the Master Fee Schedule, which the City of Oakland periodically updates to account for cost of living increases and program changes or other costs; and

WHEREAS, cabarets that desire to remain open between 2:00 a.m. and 5:00 a.m. may do so by obtaining an Extended Hours Permit in addition to their basic cabaret permit; and

WHEREAS, the City's cost of processing applications for such permits should be borne by the applicant; and

WHEREAS, the City's costs of monitoring and assisting cabarets with Extended Hours Permits should be defrayed by the permittees; now, therefore

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

SECTION 1. The Master Fee Schedule as set forth in Ordinance Number 12809 C.M.S., as amended, is hereby amended to set fees for annual cabaret permits and extended hours cabaret permits as set forth in Exhibit A, attached hereto and made a part hereof.

SECTION 2. All revenues generated through the adoption of these fees will be deposited in General Purpose Fund (1010), City Administrator Organization (02111), Police Permits Account (42411).

SECTION 3. This ordinance shall be effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption by the Council of the City of Oakland.

SECTION 4. The Master Fee Schedule is hereby amended to read as shown on Exhibit A; 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:

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

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

DATE OF ATTESTATION: _____

EXHIBIT A

City of Oakland Amendment to the Master Fee Schedule

<u>FEE DESCRIPTION</u>	<u>Fee</u>	<u>Unit</u>
SPECIAL ACTIVITIES		
A6. Cabaret Permit		
a. Cabaret Annual Permit (Occupancy Load 50 and Above)	750.00	Permit
b. Small Cabaret Permit (Occupancy Load Under 50)	250.00	Permit
c. Extended Hours Permit Application	1,000.00	Application
d. Extended Hours 18-month Permit (Occupancy Load Under 250)	2,000.00	Permit
e. Extended Hours 18-month Permit (Occupancy Load Between 250 and 299)	2,500.00	Permit
f. Extended Hours 18-month Permit (Occupancy Load Between 300 and 349)	3,000.00	Permit
g. Extended Hours 18-month Permit (Occupancy Load Between 350 and 399)	3,500.00	Permit
h. Extended Hours 18-month Permit (Occupancy Load Between 400 and 449)	4,000.00	Permit
i. Extended Hours 18-month Permit (Occupancy Load Between 450 and 499)	4,500.00	Permit
j. Extended Hours 18-month Permit (Occupancy Load 500 and Above)	5,000.00	Permit