

# CITY OF OAKLAND

## AGENDA REPORT

2007 NOV 20 PH 3: 35

**TO:** Office of the City Administrator  
**ATTN:** Ms. Deborah Edgerly  
**FROM:** Office of the City Administrator, Special Activity Unit  
**DATE:** December 4, 2007

**RE: Supplemental Report On The Proposal To Adopt An Ordinance Amending Oakland Municipal Code Chapter 5.12, "Cabarets" To (1) Allow Discretion In Permitting Cabarets Within 300 Feet Of Places Of Public Worship, Schools, And Public Libraries, and 2) Require Background Checks for Cabaret Permit Applicants; and**  
**Adopt An Ordinance Amending Oakland Municipal Code Chapter 5.02 To Provide More Notice To Residents Of Business Permit Applications**

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### SUMMARY

On November 13, 2007 the Public Safety Committee considered proposed amendments to Oakland Municipal Code (OMC) Chapters 5.02 and 5.12. The Committee voted by consensus to send the following amendments on to the City Council:

Section 5.02.030 Allow the public hearings on business permits regulated by OMC Chapter 5 to be scheduled within 45 days of completion of an application, instead of the current 30 day deadline.

Section 5.02.050 1. Require posting on the premises, in the newspaper, and on the City bulletin board at least 30 days prior to the public hearing, instead of the current 3 day notice requirement. 2. Mail notice of the hearing to property owners and residents within 300 feet of the applicant property.

Section 5.12.010 Define offenses which will disqualify an applicant from obtaining a cabaret permit and mandate revocation of an existing permit.

Section 5.12.020A Allow the City Administrator discretion in waiving the requirement that cabarets not be located within 300 feet of a place of public worship, school, or public library. The waiver can occur only with written findings that the cabaret will not have a negative impact on City resources, public safety and neighborhood quality of life.

Section 5.12.020B Specify that a cabaret permit shall not be issued if a party with an interest in the cabaret has committed a disqualifying offense.

Section 5.12.025 Outline the application review process, including the background investigation.

The Committee did not accept the proposed amendment to Section 5.12.030 which would have allowed cabarets to remain open after 2 a.m. with a Special Event Permit issued by the Oakland Police Department.

Item: \_\_\_\_\_  
City Council  
December 4, 2007

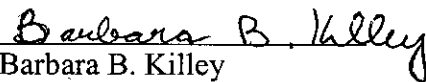
The Committee also expressed their approval of a \$600 noticing fee to cover the additional noticing requirements. This fee would be an amendment to the Master Fee Schedule. It will be submitted to the City Council as a separate report and ordinance.

### **ACTION REQUESTED OF THE CITY COUNCIL**

Staff requests that the City Council:

1. Accept this Staff Report
2. Adopt the ordinance amending the existing Cabaret ordinance (OMC Chapter 5.12) to a) allow discretionary waiver of the 300 foot rule, and b) require background checks for cabaret applicants, owners, and managers.
3. Adopt the ordinance amending OMC Chapter 5.02 to provide for longer noticing requirements to residents of cabaret permit applications, as well as other special business activity permits subject to OMC Title 5.


Respectfully submitted,

  
Barbara B. Killey  
Assistant to the City Administrator

APPROVED AND FORWARDED TO  
THE CITY COUNCIL:

  
Office of the City Administrator

APPROVED AS TO FORM AND LEGALITY  
2007 NOV 20 PM 3:35

  
Deputy City Attorney

INTRODUCED BY CITY COUNCIL MEMBER \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_ C.M.S.

**ADOPT AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.12, "CABARETS" TO (1) ALLOW DISCRETION IN PERMITTING CABARETS WITHIN 300 FEET OF PLACES OF PUBLIC WORSHIP, PUBLIC SCHOOLS, AND PUBLIC LIBRARIES AND 2) REQUIRE BACKGROUND CHECKS FOR CABARET PERMIT APPLICANTS.**

**WHEREAS**, Oakland Municipal Code Chapter 5.12 currently prohibits, without exception, the location of cabarets within 300 feet of places of worship, public schools, and public libraries; and

**WHEREAS**, the potential effect of a cabaret upon a school should be considered regardless of whether the school is a public or private school; and

**WHEREAS**, some cabaret activity may be determined to be appropriate to be conducted within reasonable proximity to places of worship, schools, and public libraries

**WHEREAS**, some cabaret activity may be conducted at times that do not conflict with the activities of nearby places of worship, schools, and public libraries and conditions may be placed upon these cabarets to ensure there are no negative residual impacts upon these places of worship, schools and public libraries; and

**WHEREAS**, the criminal background of an applicant for a cabaret permit is a factor that should be considered when granting or denying the permit, pursuant to Oakland Municipal Code Section 5.02.060's mandate that the City Administrator "consider the character of the applicant as respects morality, honesty and integrity, and all pertinent acts which may concern the health, safety, and general welfare of the public";

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 nighttime entertainment venues, while providing for the safety of Oakland residents, *protecting the sanctity of the activities of places of worship, schools, and libraries,*

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 Cabaret defined.**

### **5.12.020 Permit required.**

### **5.12.030 Regulations.**

### **5.12.040 Booths and entertainers.**

### **5.12.050 License tax.**

### **5.12.010 ~~Cabaret defined.~~ 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.

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

Section 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 jurisdiction, 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 public 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 Manager Administrator, shall give particular consideration to the peace and order and moral welfare of the public.

B. A cabaret permit shall not be issued 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.**

A. Application Filing. All applications for permits issued pursuant to this chapter, including renewals, shall be filed in the Office of the City Administrator. 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. The City Administrator shall refer the application to the Chief of Police who shall conduct background investigations on all applicants requesting permits under this chapter. 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.

#### **5.12.030 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 otherwise, or to permit such cabaret to remain open, or patrons to remain upon the premises, between the hours of two a.m. and six a.m. next ensuing.

#### **5.12.040 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.

**5.12.050 License tax.**

Every person conducting, managing or maintaining the business of a cabaret in the city shall pay a license fee of three-hundred dollars (\$300.00) annually in advance, and shall keep a copy of the license issued by the Business Tax Office, together with a copy of the cabaret permit issued 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 5.12.030, posted in a conspicuous place in the premises maintained as such cabaret at all times during which such cabaret is being operated.

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

# Notice & Digest

**An Ordinance Amending Oakland Municipal Code Chapter 5.12, "Cabarets" To (1) Allow Discretion in Permitting Cabarets Within 300 Feet of Places of Public Worship, Schools, and Public Libraries and 2) Require Background Checks for Cabaret Permit Applicants.**

This is an ordinance amending Oakland Municipal Code Chapter 5.12 to allow the City Administrator discretion in permitting cabarets that are within 300 feet of places of public worship, schools, and public libraries upon a written finding that the cabaret will not have a negative impact on City resources, public safety and neighborhood quality of life. It authorizes background checks of cabaret applicants and enumerates offenses which disqualify applicants from obtaining cabaret permits.



FILED  
OFFICE OF THE CITY CLERK  
APPROVED AS TO FORM AND LEGALITY

2007 NOV 20 PM 3:35

  
Deputy City Attorney

INTRODUCED BY CITY COUNCIL MEMBER \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_ C.M.S.

**ADOPT AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE  
CHAPTER 5.02 TO PROVIDE MORE NOTICE TO RESIDENTS OF  
BUSINESS PERMIT APPLICATIONS**

**WHEREAS**, currently the City is required to give residents only three days notice, by posting on the premises and by notification in the official newspaper of the City, of hearings on applications for Business Permits under this Chapter; and

**WHEREAS**, three days is frequently insufficient time for residents to see the notice posted on the premises, to notify others, or to make arrangements to attend the hearing; and

**WHEREAS**, thirty days would provide more reasonable notice of hearings conducted under this chapter; and

**WHEREAS**, providing thirty days of posted notice would require conducting the hearing more than the currently required thirty days following completion of the application;

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 facilitate community feedback on business permit applications.

**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:

Oakland Municipal Code Chapter 5.02 is amended as follows; additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of

ordinances not cited or not shown in underscoring or strike-through type are not changed:

### **5.02.030 Procedure on application.**

Immediately on the filing of any application for a permit as provided in Sections 5.02.010 and 5.02.020, the City Clerk shall place the acknowledged copy in the permanent records of his office, refer one copy to the City Manager and one copy to such official of the city the administrative functions of whom are those primarily concerned with the granting or denying of such permit, which latter official, hereinafter in this chapter referred to as the "investigating official," shall make such investigation of the applicant and of the facts set forth in such application as he or she shall deem advisable, and shall make a written report of such investigations, together with his or her recommendations relative to disposal of the application, to the City Manager Administrator, who shall proceed to act upon said application after a hearing set by the City Clerk for a day certain, not less than five days nor more than ~~thirty (30)~~ forty-five (45) days from the date of filing completed said application. At such hearing all persons interested shall be entitled to file objections, protests or recommendations in the premises. Such hearing may, by the City Manager Administrator, be continued over from time to time as circumstances may require; provided, however, that if hereinafter in this chapter specifically provided, the investigating official may grant the permit applied for without referring the same to the City Manager Administrator, and with or without a hearing thereon, as may be provided.

### **5.02.050 Notice of hearing on application.**

The City Clerk shall in every case of application for permit, if a hearing is to be held thereon, notify the applicant of the time and place of such hearing to be held therein as in Section 5.02.030 provided, and such notice shall be given at least ~~three~~ thirty (30) days before the date of such hearing.

In the event that a public notice of the hearing on any application for a permit may be hereinafter in this chapter required, the City Clerk shall cause a notice to be published once in the official newspaper of the city at least ~~three~~ thirty (30) days before said hearing date, and cause a copy thereof to be posted upon the premises to be primarily affected by the granting of such permit, and a copy on the bulletin board near the Council Chambers. Such notice shall set forth the fact that such application has been filed, the name of the applicant, the nature of the thing to be permitted, and the time and place of hearing upon such application.

For applications involving the ongoing use of property, notice of the hearing shall be given by posting notices thereof within three hundred (300) feet of the property involved in the application. Notice of the hearing shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the property involved and to all addresses

within three hundred (300) feet of the property. All such notices shall be given not less than seventeen (17) days prior to the date set for the hearing. The fee for the notification process, as established by the Master Fee Schedule, shall be a separate charge in addition to the application fee.

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

# Notice & Digest

## **Adopt An Ordinance Amending Oakland Municipal Code Chapter 5.02 to Provide More Notice to Residents of Business Permit Applications**

This is an ordinance amending OMC Chapter 5.02 to require 30 days notice to the public of Business Permit hearings and requiring hearings to be set with 45 days of completion of applications for these permits. Mailed notice of the hearing will also be provided to property owners and residents within 300 feet of the applicant property.