

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2007 NOV -1 PM 3:29

TO: Office of the City Administrator
ATTN: Ms. Deborah Edgerly
FROM: Office of the City Administrator, Special Activity Unit
DATE: November 13, 2007

RE: 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 (2) Allow Cabarets To Remain Open Past 2 A.M. Upon Issuance of a Special Events Permit, and 3) Require Background Checks for Cabaret Permit Applicants.

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

SUMMARY

On March 7, 2007, the Administrative Hearing Officer denied the application of Oakland Partners Group LLC for a permit to operate a cabaret at 1731 San Pablo Avenue. One basis for the denial was the proposed cabaret location would have been within 300 feet of the Oakland School for the Arts. Oakland Municipal Code (OMC) Section 5.12.020 requires cabaret applicants to set forth the fact that "the proposed location of such cabaret is not within three hundred feet of any church or synagogue or any building in use as a place of public worship or public school or public library."

The applicant appealed the denial to City Council, and a hearing was conducted on April 17, 2007. Among the issues discussed by the Council was the problem that, as written, the ordinance allows no discretion to waive the 300 foot requirement. Since that time, the Hearing Officer has been contacted by 1) the company that plans to operate a cabaret in the Fox Theatre, which will also house the Oakland School for the Arts, and 2) the company that would like to open a cabaret that will feature opera but that would be within 300 feet of an Oakland library. Without an amendment to OMC section 5.12.020, none of these projects will be permitted.

A second basis for the denial of the Oakland Partners Group application was the Hearing Officer's concern for the public safety impact of a nightclub with an occupant load of over 550 people operating within a short distance of another nightclub, @17th, with an occupant load of over 700. The Oakland Police Department (OPD) testified at the Oakland Partners Group hearing that, when both @17th and Sweet Jimmies, the former nightclub at the site where Oakland Partners Group planned to open, were operating, there were often sideshows, traffic gridlock, violence, and out of control crowds at closing time.

Item: _____
Public Safety Committee
November 13, 2007

Oakland Partners Group proposed remaining open for cabaret activity (dancing) after 2 a.m.¹ so that their patrons would disperse gradually and not create the problems associated with over 1000 people from two large clubs exiting onto the streets in close proximity. However, that is not currently a possibility as OMC section 5.12.030 prohibits cabarets from remaining open or patrons remaining on the premises between 2 a.m. and 6 a.m.

In addition to these two issues, as the administrator for cabaret permit applications, staff has fielded concerns from OPD regarding a lack of background information on cabaret permit applicants. Without such information, OPD cannot make a knowledgeable and informed recommendation to either approve or deny a permit. Staff therefore proposes to add an applicant background check to the cabaret application process.

Finally, OMC Chapter 5.02, which specifies the requirements for Business Permits such as Cabaret permits, mandates a public hearing be scheduled within 30 days of submission of the application and that the premises be posted with application notice only three days prior to the public hearing. Residents frequently complain that they either never saw the notice or, if they saw it, they did not have time to organize their neighborhood to comment on the application. Staff is therefore proposing a longer notice period and an extension of the hearing date requirement to accommodate said longer notice period.

FISCAL IMPACT

Allowing discretion to waive the 300 foot rule will likely result in the permitting of more cabarets, which would increase cabaret permit revenues and the business taxes and sales taxes paid by these businesses. The amount of these potential increases is unknown.

The proposed amendment allowing cabaret activity after 2 a.m. anticipates that cabarets would pay a fee for this privilege. However, unless the participating cabarets also paid for dedicated police services, the cost of police coverage could more than offset the fees paid.

The Oakland Police Department charges a "Live Scan" (background check) fee of \$57.00 to Oakland residents and \$67.00 to non-residents. Permit applicants are responsible for the payment of this fee. Over the past few years the Business Permits office has received an average of six cabaret permit applications annually. The annual revenue generated would depend upon the number of principals involved with each application, but would probably average approximately \$700.00.

If Council elects the proposed option of mailing hearing notices to property owners within 300 feet of the applicant property, the City would incur the cost of approximately one mailing per month. The cost depends upon the number of properties identified.

¹ The California Department of Alcoholic Beverage Control prohibits alcohol sales after 2 a.m. but does not prohibit its licensees from being open after that time.

KEY ISSUES AND IMPACTS

➤ The 300 foot rule

▪ *Legislative History*

The legislative history behind the 300 foot rule is either non-existent or has disappeared. Staff requested from the Office of the City Clerk (City Clerk) all documents pertaining to OMC Chapter 5.12 and its predecessors. The earliest document located by the City Clerk was a 1949 amendment to Sec. 5-04.05, which defined cabaret and required the 300 foot distance. The section as it existed before the amendment was also shown on this document, and, although it did not show an adoption date, the 300 foot distance was required. Under the current OMC, Section 5-04.05 is divided into two sections, 5.12.010 and 5.12.020. Section 5.12.020 contains the 300 foot language, which was carried over intact from prior code Section 5-04.05. No staff reports or other justifications for the distance were found. Therefore, all that is known from the legislative history is that this requirement has existed since at least 1949.

▪ *Additional Considerations*

Common sense tells us that some adult activities are incompatible with children's activities and religious activities. Cabaret activities may sometimes fall into the category of incompatible adult activities. For example, it would be unacceptable for a cabaret to operate during school hours and to lure students off school grounds. Litter from cabaret activity, such as empty liquor bottles, beer cans, and cigarette butts, would also be considered detrimental to schools, libraries, and places of worship. Requiring cabarets to be over 300 feet from these sensitive uses may prevent such problems.

In 1949 Oakland's legislators could hardly have been expected to envision a City hosting the number and variety of schools that exist today. The Oakland Unified School District website lists 159 public schools under its jurisdiction; of these 36 are Child Development Centers, often located near other schools and offering preschool and before-school and after-school childcare for children ages 3 through 9. There are an additional 23 charter schools listed as public schools at the following website: http://www.publicschoolreview.com/state_charters/stateid/CA. A Google search of Oakland private schools yields 30 additional results. Although private schools are not currently covered by the 300 foot rule, it is difficult to imagine policy considerations related to the health and safety of students that would not apply to private schools as well as public schools.

Many of these schools, particularly the newer charter schools, are located in the downtown area, where the City has encouraged the development of nightlife. Others are sited on busy commercial streets, where cabarets also tend to locate.

Attaching conditions to cabaret permits to prevent negative effects could allow the activities of both schools and cabarets to co-exist. Oakland's Cabaret Permit Conditions currently require permittees to submit a littering plan. A cabaret permitted near a school, church, or library could be required to clean up litter in the surrounding area immediately following closure of the

cabaret instead of the following day. Students going to school or worshippers going to church in the morning would not then be subject to visible aftermath from cabaret activity.

If appropriate, Permit Conditions could also limit cabaret hours to prevent conflicts. However, this would not always be necessary. A cabaret is defined as a place where entertainment is provided and where food or beverages are sold. The entertainment may be family-friendly and/or culturally enriching, as in the case of the opera venue. The beverages that are sold may be non-alcoholic beverages. Of course, if alcoholic beverages are sold and children are either part of the patronage or are nearby in schools or libraries, there must be a plan for ensuring that alcohol is not served to anyone underage. This type of plan is currently required for cabarets that have events that include children, and it would be added to permits of cabarets located near schools or libraries.

Use conditions provide a powerful incentive for compliance, as violations can result in revocation of the permit. The State also revokes ABC licenses for sales to minors and other violations of state laws and regulations. Although revocation processes may be lengthy, permits such as cabaret permits may be suspended upon a hearing conducted with five days notice. Permit holders may appeal suspensions and revocations to the City Council, but a suspension is effective immediately upon delivery of the decision.

▪ ***Discretion***

One alternative to a strict 300 foot rule would be a case-by-case review and decision. Currently, the 300 foot requirement is absolute. The Office of the City Attorney has advised that neither the Hearing Officer nor the City Council are authorized to waive the requirement. This stands in contrast to other chapters within Title 5's Business Permitting scheme.

Chapter 5.36 requires massage establishments to be more than 1000 feet from specified sensitive uses but allows a waiver of the distance requirement through the following process:

A massage establishment permit may be issued to applicants that do not meet the requirements of this section if the City Administrator makes written findings that:

1. The massage establishment was granted a Conditional Use Permit (CUP) for operating a massage establishment; or
2. The massage establishment will not have an impact on public safety or neighborhood quality of life.

Chapter 5.80 requires a 1000 foot distance from sensitive uses for medical cannabis dispensaries but provides discretion to waive the distance requirement as follows:

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 dispensary is not within one thousand (1,000) feet, unless the City Manager or his/her designee in their discretion determines that the location will not impact the peace and order and welfare of the public, of a public or private school or a public

library or youth center (serving youth eighteen (18) and under), or parks and recreation facilities or residential zone or another dispensary.

The proposed amendment to Chapter 5.12 regulating cabarets would also require a determination that the cabaret not have a negative impact on public safety or the neighborhood quality of life. This determination would be based upon evidence submitted to the City Administrator, including, but not limited to, public testimony, input from any school, library, or place of worship that is within 300 feet, and input from OPD and other City departments. By carefully screening applicants and establishing Permit Conditions specifying standards of conduct in areas of potential incompatibility, it is anticipated that at least some cabaret permits could be issued and operated within 300 feet of schools, libraries, and places of worship without prohibitive negative effects.

➤ **2:00 a.m. Closing Times**

California's Alcoholic Beverage Control Department mandates that licensed establishments not sell alcohol between 2 a.m. and 6:00 a.m. Oakland's cabaret ordinance currently augments this restriction by prohibiting cabaret patrons from even being on the premises between 2 a.m. and 6 a.m. For many years the OPD officers who work weekend nights have experienced problems with the 2:00 a.m. closing time for bars and nightclubs. In the downtown area, large, often drunk and unruly crowds converge on the streets at 2 a.m. The problems range from crowd dispersal to homicide. Sideshows sometimes ensue and may travel to areas remote from downtown, such as East Oakland. Several Oakland cabaret owners have suggested that these problems would be reduced by allowing the cabarets to remain open after 2 a.m. so that patrons could exit gradually.

Other large Bay Area Cities have experienced similar problems. San Francisco and San Jose have enacted ordinances establishing two different approaches to resolving the problems. Both approaches involve allowing clubs to remain open after 2:00 a.m.

▪ ***San Francisco Model – Extended Hours Permits***

San Francisco has extensively codified Entertainment Regulations for Extended-Hours Premises as Section 1070 et seq. of the Police Code, a subset of their Municipal Code. These regulations, which apply to all businesses that operate between the hours of 2 a.m. and 6 a.m., establish such basic provisions as application requirements that are very similar to Oakland's current cabaret application requirements, and the criteria for determining whether to grant an application.

The regulations also outline the basis for suspension and revocation, which, mirror sections of Oakland's OMC that deal with noise abatement, building integrity and safety, and public health and safety. Increases in pedestrian traffic, incidence of disorderly conduct, or level of noise are specifically mentioned as grounds for suspension and revocation. A more unique provision requires clubs that have an occupant load of over 500 provide patrons with free drinking water and with earplugs, either free or at a reasonable price.

Ray Bobbitt, the owner of Oakland's former nightclub, Simone's, owns four nightclubs in San Francisco, all of which have Extended Hours Licenses. He relayed to staff that nightclubs must have a proven track record of successfully operating peacefully to obtain an Extended Hours License, thus providing an incentive to maintain control of their patrons, their premises, and the surrounding area. They may also be required to hire overtime police officers as a condition of the privilege.

The San Francisco Entertainment Commission hears business plans for both regular Entertainment Permits and Extended Hours Permits, determines applicable conditions, and issues the permits. Entertainment Department staff report that each application is considered individually, not only for possible impacts on police resources but also factors such as access to public transit and the availability of clean-up or other Public Works resources. If it is determined that police resources would be required, the club must pay for staffing by off-duty officers in order to obtain the permit. Additionally, depending on the area of the city, applicants may be required to obtain a Conditional Use Permit prior to applying for an Extended Hours Permit.

- ***San Jose Model – Staggered Release***

San Jose is currently conducting a pilot program whereby they permit all of the nightclubs in their Entertainment Zone to remain open until 3 a.m. Sales of alcohol must cease at 2 a.m. (state law), but the clubs can serve food and non-alcoholic drinks. The program, which has been in operation for one month, will run six months, after which the affects on city resources, as well as the response of the clubs, will be evaluated.

- ***Oakland's Experience***

Over the years Oakland has issued Special Event permits allowing clubs to remain open past 2 a.m. on New Year's Eve. The Special Events Unit of OPD reports that these nights have proven to be largely trouble-free. It is not known, however, how much of this success can be attributed to extended hours and how much to the vast increase in police presence on New Year's Eve.

OPD's Alcoholic Beverage Action Team (ABAT) staff report that, in 2002, an East Oakland club was given permission to close after 2 a.m. The major problem, according to ABAT staff, was that the Sideshow Detail, the OPD unit that normally assisted with exiting nightclub crowds, was not on duty after 2 a.m. and there were no other police resources for crowd control or problem resolution. The requirement for and impact on police resources must be considered in any authorization of extended hours.

- **Special Event, Pilot Project, Ongoing Permit**

Cabarets may currently apply to Special Events for Extended Hours permits on an individual event basis. Each application is researched in terms of its potential impact on police resources. In these situations, as a condition of granting the permit, Special Events may require dedicated police resources on an overtime basis, paid for by the cabaret. While dedicated police resources may be required for ongoing Extended Hours permits, research would not be required after initial approval and establishment of conditions of operation.

o **Police Resources**

The biggest question regarding the establishment of a program that allows issuance of Extended Hours permits is how police coverage would be provided and who would pay for it. Overtime officers are one option. The Oakland Police union contract requires that officers working overtime receive at least five hours pay. One of these hours is assumed to be consumed by the officer going to and from the overtime venue from the police station. Several nightclubs have expressed an interest in paying for police services. However, they do not believe that four to five hours are necessary, as the majority of all problems occur between 1:30 a.m. and 2:30 a.m.

Dedicated police resources are another option. The major responsibility of the San Jose Police Department Downtown Services Detail is the policing of nightclubs in San Jose's Entertainment Zone. A combination of plain clothes and uniformed officers not only keep the peace and prevent out of control crowds, but also confirm proper credentialing of nightclub security staff, ensure that permits are current, and check for ABC violations. This group's assigned shift runs until 3 a.m. New York City also assigns dedicated officers to nightclubs.

▪ ***Closing Time Recommendation***

The City Administrator's Office is currently evaluating multiple strategies for dealing with the combination of growth in both Oakland's nightlife venues and residential communities. Implementation of either an Extended Hours Permit program or a Staggered Release program are among options that may be determined as potentially useful. However, more research and coordination for devising a complete strategy is required.

In the meantime, codifying the current practice of Special Events permits, and making them valid for an extended but limited time period, for cabaret activity after 2 a.m. would provide the City with the opportunity to experiment, on a controlled basis, and only after approval by OPD, with proposals for after-hours activities that provide the potential for resolving the problems that plague Oakland almost every weekend at cabaret closing time.

➤ **Other Proposed Ordinance Changes**

▪ ***Background Checks Required For Cabaret Permit Applicants***

When the Business Permit unit receives a cabaret permit application, a copy is sent to several departments to notify them and to obtain their approval or reasons for not approving. In some recent cases OPD has been reluctant to approve the application because nothing was known about the applicant's history. Other business activity permits, such as Massage Establishment and Medical Cannabis Dispensary applications require background checks of applicants, owners, managers, and other interested parties.²

² Background checks of all employees are required for Medical Cannabis permit applicants and holders. .

▪ *Expanding Noticing Requirements to Residents*

One of the major complaints staff receives regarding special business activity permits, including cabaret permits, is the short notice provided to neighborhood residents. OMC Section 5.02.050 currently requires hearings to be scheduled within 30 days of an application and application notices to be posted on the premises, in the newspaper, and on the City bulletin board only three (3) days before a hearing. The Hearing Officer is willing to continue hearings contested on the basis of inadequate notice, but this does not resolve the problem.

The proposed amendment of Section 5.02.050 extends an additional 15 days for City staff to schedule the public hearing after completion of an application, but requires the applicant to post the notice on the premises 30 days before the hearing. This would provide area residents significantly greater opportunity to notice the application in their daily access of the area. This is the approach utilized by San Francisco regarding regular cabaret permits and Extended Hours Licenses.

Staff also presents for Council's consideration an option that would apply to property-based businesses only. This option would utilize the Oakland Planning Code's method of, in addition to posting the premises, posting notices within 300 feet of the premises and notifying property owners in writing, by U. S. Mail, who live within 300 feet of the applicant property of the hearing date. This option has the advantage of being an understood and expected method of notice to Oakland residents. Its disadvantage is that there is no funding for the Zoning and Planning Department, which has access to the property database and currently provides notice of hearings under the Planning Code, to undertake this duty.

Because the mailing option would apply only to applications that involve the regular use of real property, the proposal for extended noticing would be required for such permits as taxicabs and charitable solicitations, where newspaper and City bulletin board notice are needed. For property-based permits, such as cabarets, massage establishments, and pawnbrokers, both the proposed extension and the mailing option could be utilized, as the proposed extension involves posting the premises, and the mailing option provides notice to surrounding property owners.

SUSTAINABLE OPPORTUNITIES

Economic

The proposed ordinance amendments would likely generate additional City revenues by allowing the permitting of cabarets within 300 feet of schools, libraries, or places of worship when it has been determined it does not pose a threat to public health and safety. Although the projected revenue increases are unknown at this time, at least three prospective cabaret locations have been determined to be or have voluntarily indicated that they are within 300 feet of either a public school or library.

Environmental

The potential negative environmental impacts of allowing discretionary permitting of cabarets within 300 feet of schools, libraries, and places of worship may be mitigated by the imposition of Permit Conditions. Violation of Permit Conditions would be grounds for suspension or revocation of the permit.

Social Equity

Staff is unaware of any social equity issues involved with the proposed changes to cabaret permitting.

DISABILITY AND SENIOR CITIZEN ACCESS

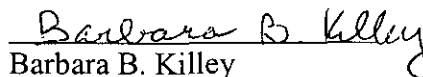
There are no known disability or senior citizen access issues.

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, b) establish an option for cabaret activity after 2 a.m. with a Special Activity permit, and c) 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

APPROVED AND FORWARDED THE
THE PUBLIC SAFETY COMMITTEE.


Office of the City Administrator

Item: _____
Public Safety Committee
November 13, 2007

INTRODUCED BY COUNCILMEMBER _____

OFFICE OF THE CITY CLERK
OAKLAND

[Signature]
City Attorney

OAKLAND CITY COUNCIL

2007 NOV -1 PM 3:50

ORDINANCE No. _____ C.M.S.

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 (2) ALLOW CABARETS TO REMAIN OPEN PAST 2 A.M. UPON ISSUANCE OF A SPECIAL EVENTS PERMIT, AND 3) 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, Oakland Municipal Code 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 City has identified situations in which allowing cabaret patrons to remain after 2 a.m. may reduce problems associated with mass exiting of crowds; 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"; now, therefore

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, unless the Oakland Police Department has issued a Special Events Permit in conformance with Chapter 9.52.

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

7-1

PUBLIC SAFETY CMTE.

NOV 13 2007

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 (2) ALLOW CABARETS TO REMAIN OPEN PAST 2 A.M. UPON ISSUANCE OF A SPECIAL EVENTS PERMIT, AND 3) 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 a cabaret to remain open between the hours of 2 a.m. and 6 a.m. if a Special Events Permit has been issued to the cabaret by the Oakland Police Department. It authorizes background checks of cabaret applicants and enumerates offenses which disqualify applicants from obtaining cabaret permits.

71
PUBLIC SAFETY CMTE.

NOV 18 2007

Debra CR Jacke
City Attorney

INTRODUCED BY COUNCILMEMBER WHEE
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

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; now, therefore

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 5.02 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.

PUBLIC SAFETY COMTE.

Immediately on the filing of any application for a permit as provided in Sections **NOV 13 2007** 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.

[Option] 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. All such notices shall be given not less than seventeen (17) days prior to the date set for the hearing.

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-

7-2
PUBLIC SAFETY CMTE.

NOV 13 2007

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 filing a completed application for these permits. An option is also provided for Council's consideration that would provide mailed notice of the hearing to property owners within 300 feet of the applicant property., not less than 17 days prior to the date set for the hearing.

7-2

FUBLIC SAFETY CMTE.

NOV 13 2007