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2015 JAN 13 PM 3:47

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DATE: January 27, 2015
TO: Oakland City Council Public Safety Committee
ATTN: Noel Gallo, Chair
FROM: Council Member Rebecca Kaplan

RE: AN ACTION ON AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.12.040 CABARETS TO AN ACTION ON AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 5.12. CABARETS SECTION 040 EXTENDED HOURS PERMIT PROCESS TO MAKE THE PILOT PROGRAM A PERMANENT PART OF THE OMC.

Dear Members of the City Council:

On April 20th 2010 the City of Oakland adopted an amendment to the Oakland Municipal Code authorizing the City Administrator's office to issue extended hour permits for an annual fee to validly operating cabarets in good standing in the 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 Subsection 17.102.210 B.1.a. These extended hours permits allow these businesses to remain open between 2:00 and 5:00 a.m. The ordinance allows for a maximum of ten (10) extended hour permits in the Central District.

The pilot program was extended in 2012 and finally expired this year. The recommended action

Adopting the proposed amendments to Section 040 Extended Hours Permit Process of Chapter 5.12 Cabarets in the Oakland Municipal Code would make an annually renewed extended hours Permit, administered through the Special Business Permits, a permanent part of the OMC.

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BACKGROUND AND ANALYSIS

On April 29, 2010 the Oakland city Council adopted Ordinance 13006 C.M.S that among other things created a Pilot Program for Extended Hours Cabaret. The pilot program resulted in three (3) permits being issued for extended hours. In 2012 the pilot program was extended.

Pursuant to Chapter 5.12 no patrons are allowed to remain on the premises of a cabaret after 2 a.m. The Extended Hours Pilot program allowed the City Administrator's office to issue an extended hour permit for an annual fee to validly operating cabarets to remain open after 2:00 am, with the goal being to allow business patrons to leave at a time of their choosing, moderating their pace of consumption and ensuring that they are not leaving intoxicated at 2:00 a.m. and walking to their cars and driving shortly after. It also ensures that clubs and bars in the central district are not creating a mass exodus at 2:00 a.m., but instead allow for slow weaning and exodus of patrons between 2:00 and 5:00am. Businesses report that no money is actually made after hours, as there are no sales, but being open after hours attracts clientele from a broader radius (San Francisco, LA, Sacramento, San Jose) which results in more sales generally for these businesses.

The extended hour permit has more rigorous and ongoing reporting requirements than the cabaret permit. There is a public hearing for applicants, with consideration the operating history and business practices of the applicant as well as input from the Chief of Police or his designee. Under this ordinance the City Administrator can establish conditions of approval, including but not limited to a security plan, parking plan, and set hours of operations. Permittees must submit a monthly calendar of events to the City Administrator's Office and to the special events unit of OPD, 30 days in advance, which allows the City Administrator to require additional security measures if deemed necessary. Business owners are liable any for excessive police costs incurred related to enforcement.

The legislation allows for a maximum of 10 extended hour permits, at this time there are three businesses in the Central District that have permits. The permits are renewed annually and are revocable at any time.

ANALYSIS

Evening activities; dining and entertainment play a critical role in the revitalization of the Downtown. The ability of these businesses to attract a regional customer base, and providing a positive and safe experience is key.

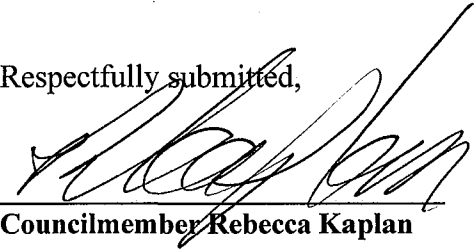
One of the key purposes of the extended hour permit was to allow business patrons to leave at a time of their choosing, moderating their pace of consumption and ensuring that they are not leaving intoxicated at 2:00 a.m. and walking to their cars and driving shortly after. It also ensures that clubs and bars in the central district are not creating a mass exodus at 2:00 a.m., but instead allow for slow weaning and exodus of patrons between 2:00 and 5:00am. Businesses report that no money is actually made after hours, as there are no sales, but being open after hours attracts

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clientele from a broader radius (San Francisco, LA, Sacramento, San Jose) which results in more sales generally for these businesses.

The council offices have worked with extended hour permit holders and with OPD in examining the impacts of the program. In looking at crime data over the period of the program, there is no documented correlation between the extended operating hours and crime.

Respectfully submitted,



Councilmember Rebecca Kaplan

Prepared by:
Ada Chan:
Policy Analyst – Councilmember Kaplan

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DRAFT

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

**ORDINANCE AMENDING OAKLAND MUNICIPAL CODE
CHAPTER 5.12. 040 EXTENDED HOURS PERMIT PROCESS
TO MAKE THE PILOT PROGRAM A PERMANENT PART
OF THE OMC.**

WHEREAS, cities regulate late night eating and drinking and entertainment establishments in a way that concentrates them in certain areas by market forces as well as local regulation; and

WHEREAS, the Oakland police department experiences mass exodus of cabaret patrons 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 determined 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 in this way moderate the pace of consumption; and

WHEREAS, a cabaret permit maybe denied or an existing cabaret permit suspended or revoked on the basis of a disqualifying offense as defined in Oakland Municipal Code Chapter 5.12; and

WHEREAS, Oakland Municipal Code Chapter 5.12 allows no one to remain on the premises of a cabaret establishment between the hours of 2 a.m. and 6 a.m. except through the extended hour cabaret permit program; and

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

WHEREAS, and immediate suspension procedure exists for extended hour hours permits;

NOW THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND ORDAINS AS FOLLOWS:

- 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.

C. A maximum of ten extended hours permits shall be issued 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 Subsection 17.102.210 B.1.a.

D. The permits shall be issued at the discretion of the City Administrator or his/her designee to existing cabarets in good standing following a public hearing conducted according to the requirements of Chapter 5.02, and based on an evaluative point system that takes into consideration the operating history and business practices of the applicant, and any other factors that is deemed necessary to the peace, order and welfare of the public. Such issuance shall factor into consideration and give great weight to the recommendation of the Chief of Police or his/her designee. A proposed extended hours permittee may be denied for failure to meet requirements of the City building code, City fire code, City planning code, this 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 30 days notification to and approval by the City Administrator's Office.

F. Permittees must submit a monthly calendar of events to the City Administrator's Office and to the special events unit of OPD. Calendars shall be submitted 30 days in advance.

G. The permit shall be subject to suspension or revocation according to the standards of Chapter 5.02, and the owner/operator shall be liable for excessive police costs related to enforcement. The Chief of Police, in his or her discretion, may immediately suspend, and recommend for revocation, such permit for any reason for which the granting of such permit might be lawfully denied, to protect the person and property of patrons of the location, or to protect the safety and welfare of the general public. Such suspension shall last no longer than is practically necessary to schedule a due process hearing on the merits of the revocation and the recommendation by the Chief of police or his/her designee to revoke the permit. A hearing to show cause must be held within ten business days from the date of suspension, except that such suspension cannot exceed ten days. If such suspension was the result of violent crime, narcotic related crime, melee, or gang activity emanating from or occurring on the premises the suspension shall not be removed until a final decision from the hearing officer has been rendered. All other suspensions may be removed prior to the hearing if the hearing cannot be held within ten days although the decision of the hearing officer may include additional suspension or revocation of the permit.

H. The application fee and annual fee for the extended hours permit shall be specified in the master fee schedule.

I.A business whose extended hours permit is denied, suspended, or revoked may request a hearing to show cause why the permit should not be denied, suspended, or revoked. The hearing shall be conducted by an Administrative Hearing Officer, as defined in Chapter 5.02

(Ord. No. 13006, § 4, 5-4-2010)

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2010

PASSED BY THE FOLLOWING VOTE:

AYES—

NOES—

ABSENT—

ABSTENTION—

ATTEST: _____

LaTonda Simmons

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