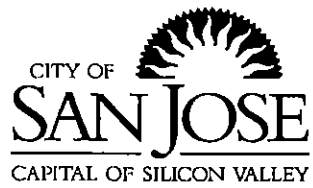
COUNCIL AGENDA: 02/07/06
ITEM: 8.1



Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: **90 Day Extension of Urgency Ordinance No. 27602 relating to Denial, Suspension, Revocation Or Summary Suspension of Permits Or Licenses As A Result Of Public Nuisance, Criminal Activity or Imminent Threat To Public Safety**

DATE: February 2, 2006

RECOMMENDATION

Extension of Urgency Ordinance No. 27602 amending Sections 6.02.130 and 6.02.250 of Chapter 6.02 of Title 6 of the San Jose Municipal Code specifying additional grounds for the denial, suspension or revocation of a license or permit and authorizing the designated department head to immediately suspend a license or permit under specified circumstances and setting forth the facts constituting such urgency, for an additional 9 days, until May 14, 2005.

BACKGROUND

On November 15, 2005 the City Council adopted Ordinance No. 27602. The Ordinance was adopted after a series of incidents in the City that highlighted the need to more strictly regulate the operation of public entertainment venues and how those venues impact the public health, safety and welfare. More specifically, the incidents highlighted an urgent need for the City to protect those who live in, work in, and visit the areas neighboring public entertainment venues and for the Chief of Police to have the ability to monitor and control criminal and nuisance activity stemming from or connected to public entertainment venues in the City. The City Attorney's November 10, 2005 memorandum to the City Council and a copy of Ordinance No. 27602 are attached to this memorandum.

ANALYSIS

The Urgency Ordinance that the City Council adopted on November 15th remains in effect only until February 13, 2006, unless prior to that date further action is taken by the City Council to extend or amend it. At the time of adoption, the City Council also directed City Staff to work with stakeholders to review and develop amendments to the Urgency Ordinance. Since that time, the Vice Mayor has chaired several meetings of

an Urgency Ordinance Taskforce which includes stakeholders, City Staff, and any interested members of the public to discuss the ordinance and other issues relating to the operation of nightclubs in the Downtown. However, the process of consultation with stakeholders is not yet complete, so Staff is requesting a further extension of the Urgency Ordinance until May 14, 2005 to give the Taskforce more time to complete its work.

OUTCOMES

Extension of the Urgency Ordinance for a further 90 day period will allow the Urgency Ordinance Taskforce more time to complete its work and for Staff to report back to the City Council.

PUBLIC OUTREACH

N/A.

COORDINATION

This memorandum was coordinated with the Police Department.

CEQA

Not a project.

RICHARD DOYLE
City Attorney

By _____
Carl B. Mitchell
Senior Deputy City Attorney

Attachments
cc: Mark Linder
Joseph A. Horwedel
Robert L. Davis

COUNCIL AGENDA: 11/15/05
ITEM: 3.4

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: **Denial, Suspension, Revocation Or Summary Suspension of Permits Or Licenses As A Result Of Public Nuisance, Criminal Activity or Imminent Threat To Public Safety**

DATE: November 10, 2005

RECOMMENDATION

Adoption of an urgency ordinance amending Sections 6.02.130 and 6.02.250 of Chapter 6.02 of Title 6 of the San Jose Municipal Code to specify additional grounds for the denial, suspension or revocation of a license or permit and to authorize the designated department head to immediately suspend a license or permit under specified circumstances and setting forth the facts constituting such urgency.

BACKGROUND

There have recently been a series of incidents in the City that have highlighted the need to more strictly regulate the operation of public entertainment venues and how those venues impact the public health, safety and welfare. More specifically, the incidents highlighted an urgent need for the City to protect those who live in, work in, and visit the areas neighboring public entertainment venues and for the Chief of Police to have the ability to monitor and control criminal and nuisance activity stemming from or connected to public entertainment venues in the City.

Title 6 of the Municipal Code specifies the permit and license requirements for various types of businesses, including businesses which offer live entertainment. Various department heads, including the Chief of Police, administer the provisions of Title 6 depending on the type of permit or license being issued. Chapter 6.02 of Title 6 sets forth the procedures for denial, suspension, summary suspension and revocation of licenses and permits issued by the City pursuant to Title 6.

On November 2, 2005, the Rules Committee directed an ordinance be brought forward that will provide the Chief of Police with an enforcement tool to deny, suspend or revoke a Title 6 permit or license administered by the Police Department when the Chief of Police determines that an applicant, permittee or licensee has created, maintained or suffered a public nuisance or criminal activity on or in proximity to the permitted or licensed premises.

It was further directed that amendments be brought forward to the summary suspension provision of Title 6 to provide the Chief of Police with an enforcement tool that would allow the immediate suspension of a license or permit of an entertainment venue if the operation poses a safety threat to residents and visitors in the City.

The Rules Committee also requested that recommendations be brought forward regarding any other changes to Title 6 that would assist the Chief of Police in controlling and deterring criminal and nuisance activity on or in proximity to licensed or permitted premises.

Finally, the Rules Committee invited discussions regarding stricter regulation of off-site sales of alcoholic beverages and how such regulation might apply to on-site sales of alcoholic beverages.

ANALYSIS

The proposed amendments to Chapter 6.02 discussed in this memorandum would apply to all permits and licenses issued pursuant to Title 6, including the public entertainment permit and license. As mentioned above, the Title 6 permits and licenses are administered by various department heads, including the Chief of Police. For ease of reference, this memorandum will refer to the Chief of Police.

The proposed ordinance would amend Chapter 6.02 to add new grounds for denial, suspension, summary suspension and revocation and to provide for immediate suspension of a license or permit under specified circumstances as described below.

Under the new grounds for denial, suspension and revocation, on prior written notice, the Chief of Police can deny, suspend or revoke a public entertainment permit or license when the Chief determines that the applicant, permittee or licensee has created, maintained or suffered a public nuisance or criminal activity on the business premises or any parking site or similar facility used by patrons of the business or within 100 feet of the premises or any parking site or similar facility used by patrons of the business.

The amendments to the summary suspension provision authorize the Chief of Police to summarily suspend a public entertainment license or permit if he determines that there is an imminent threat or danger to the public health, safety or welfare that is connected to the business of the permittee or licensee in that the threat exists on the business premises or any parking site or similar facility used by patrons of the business or within 100 feet of the premises or any parking site or similar facility used by patrons of the business. The grounds upon which the Chief of Police can base the summary suspension include the following: (1) there is an urgent need to take immediate action to protect the public from imminent threat of injury or harm; (2) there has been a violation of a permit or license condition or other provision of the San Jose Municipal

Code that creates an imminent danger to the public health, safety or welfare; and, (3) there has been a violation of Municipal, State or Federal law, in connection with the operation of the licensed or permitted business, that creates an imminent danger to the public health, safety or welfare.

The amendments further change the current summary suspension process so that the suspension may remain in effect for up to thirty (30) days, or until such time as the licensee or permittee has shown, to the satisfaction of the Chief of Police, that the threatening condition has been corrected or that the threat of danger has ceased, whichever occurs first. However, in no circumstances can the summary suspension last more than thirty (30) days. If the circumstances warrant, the Chief of Police may commence revocation proceedings during the suspension.

Finally, the amendments provide that any appeal of the suspension must be made to the Chief of Police, who in turn must hold a hearing within five days of the appeal to allow the permittee or licensee an opportunity to present evidence that would either support that the summary suspension should not have occurred or that the threatening condition has been corrected or mitigated.

With regard to other recommended changes to Title 6, the Police Department, in coordination with the Department of Planning, Building and Code Enforcement and the City Attorney's Office, will continue to explore additional measures to further assist the Chief of Police in controlling and deterring criminal and nuisance activity on or in proximity to licensed or permitted businesses.

The Police Department will also continue to have discussions with the Department of Planning, Building and Code Enforcement and the City Attorney's Office regarding how further regulation of the on-site sale of alcoholic beverages might assist in the Chief Of Police's effort to control and deter criminal and nuisance activity on or in proximity to licensed or permitted businesses.

OUTCOMES

Adoption of this ordinance would immediately provide the Chief of Police with further grounds under which to deny, suspend or revoke business permits. It would also immediately provide the Chief of Police with a more meaningful tool by which to summarily suspend a business permit when an imminent threat to the public health, safety or welfare exists on or in proximity to the permitted premises or parking sites used by patrons of the permitted business.

PUBLIC OUTREACH

N/A.

COORDINATION

This memorandum was coordinated with the Police Department. This Office will continue to work with the Police Department with respect to implementation of the proposed addition and amendments to Chapter 6.02.

CEQA

Not a project.

RICHARD DOYLE
City Attorney

By _____
Angelique Gaeta Nedrow
Deputy City Attorney

cc: Del Borgsdorf
Stephen Haase
Robert Davis

ORDINANCE NO. 27602

AN URGENCY ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTIONS 6.02.130 AND 6.02.250 OF CHAPTER 6.02 OF TITLE 6 OF THE SAN JOSE MUNICIPAL CODE TO SPECIFY ADDITIONAL GROUNDS FOR THE DENIAL, SUSPENSION OR REVOCATION OF A LICENSE OR PERMIT AND TO AUTHORIZE THE DESIGNATED DEPARTMENT HEAD TO IMMEDIATELY SUSPEND A LICENSE OR PERMIT UNDER SPECIFIED CIRCUMSTANCES AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY, TO BE EFFECTIVE UNTIL FEBRUARY 13, 2006 UNLESS PRIOR TO THIS DATE ACTION IS TAKEN BY THE CITY COUNCIL TO EXTEND OR AMEND THE PROVISIONS OF THIS URGENCY ORDINANCE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 6.02.130 of Chapter 6.02 of Title 6 of the San José Municipal Code is amended to read as follows:

6.02.130 Denial, Suspension Or Revocation

An application for a permit or license may be denied and a permit or license issued pursuant to this Title may be suspended or revoked by the department head upon any of the following grounds:

A. Conviction of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business, profession or trade for which the permit or license was issued;

B. Conviction of a felony within the previous five (5) years;

C. Conviction for commission of acts involving dishonesty, fraud, or deceit with the intent to substantially benefit the applicant or another, or substantially injure another;

D. Commission of acts which would constitute a felony or which would constitute a crime if the crime is substantially related to the qualifications, functions, or duties of the business, profession or trade for which the permit or license was issued;

E. Knowingly making a false statement of fact or omitting a fact required to be revealed in an application for the permit or license, or in any amendment or report or other information required to be made thereunder;

F. The premises in which the permitted or licensed activity will occur or the proposed use for which the permit or license is sought is in violation of any building, zoning, health, safety, fire, police or other provision of this Code or of county, state or federal law which substantially affects the public health, welfare or safety;

G. Violation of the terms and conditions of the permit or license or other requirements of this Code;

H. The applicant, licensee or permittee has owned or leased premises that have been the subject of an administrative, civil or criminal nuisance abatement action and court judgment or administrative determination finding the premises to be a nuisance within the past five (5) years;

I. Employment or otherwise contracting for the services of a manager whose ownership/management application or license has been denied or revoked;

J. The holding of any ownership interest of more than ten percent (10%) of a business, other than a publicly traded corporation, by any person whom the

department head has not approved through any applicable ownership/management application procedure;

K. Failure to pay any disturbance response fee imposed pursuant to Section 6.02.310;

L. A prior permit or license application has been denied by the City or any state, county or local agency on one or more of the above grounds within one (1) year prior to the date of the current application;

M. A permit or license issued by the City or any state, county or local agency has been revoked or suspended within the previous four (4) years prior to the date of the current application;

N. The licensee or permittee has engaged in, created, maintained, or suffered either a public nuisance, as defined in Section 1.13.050 of this Code or Sections 3479 and 3480 of the California Civil Code, or criminal conduct, as proscribed in the California Penal Code, on or in proximity to the licensed or permitted premises or in connection with the operation of the licensed or permitted premises. In the case of a Public Entertainment Permit or Ownership / Management License issued pursuant to Chapter 6.60 of this Code, the department head may consider the following to be in proximity to the licensed or permitted business: any area within one hundred (100) feet of the licensed or permitted business premises or any area within one hundred (100) feet of any parking site or similar facility used by the customers of the licensed or permitted business or as part of the licensed or permitted business operation.

SECTION 2. Section 6.02.250 of Chapter 6.02 of Title 6 of the San José Municipal Code is amended to read as follows:

6.02.250 Summary Suspension

A. A license or permit may be summarily suspended if the department head determines there is an imminent threat to the health, safety or welfare of the public at the licensed or permitted premises or on any parking site or similar facility used by customers of the licensed or permitted business or used as part of the licensed or permitted business operation. In the case of a Public Entertainment Permit or Ownership / Management License issued pursuant to Chapter 6.60 of this Code, the department head may consider an imminent threat to the health, safety or welfare of the public which exists within one hundred (100) feet of the licensed or permitted business premises or within one hundred (100) feet of any parking site or similar facility used by the customers of the licensed or permitted business or used as part of the licensed or permitted business operation.

B. The department head's determination that there is an imminent threat to the public health, safety or welfare shall be based on one or more of the following:

1. There is an urgent need to take immediate action to protect the public from an imminent threat of injury or harm;

2. There has been a violation of a permit or license condition or other requirement of this Code that creates an imminent danger to the public health, safety or welfare; or

3. There has been a violation of Municipal, State or Federal law, in connection with the operation of the licensed or permitted business, that creates an imminent danger to the public health, safety or welfare.

C. The summary suspension shall remain in effect for no more than thirty (30) days.

D. Written notice of summary suspension shall be delivered to the licensee or permittee at the address stated on the application, permit or license at the time of the summary suspension. Notice given to the licensee or permittee shall include the following information:

1. The length of time the summary suspension shall remain in effect;

2. The grounds and reasons upon which the summary suspension is based;

3. That the licensee or permittee aggrieved by the summary suspension may immediately request relief from the summary suspension by requesting a hearing before the department head and the method for requesting such a hearing; and

4. The requirement of the department head to provide the licensee or permittee with a hearing as set forth in Section 6.02.250(F).

E. If the licensee or permittee wishes to be relieved from the summary suspension, the licensee or permittee must request a hearing before the department head by following the procedures set forth in the notice of summary suspension.

F. The department head must respond to the licensee's or permittee's request for a hearing by holding a hearing to affirm, modify or overrule the summary suspension within five (5) days of the licensee's or permittee's request, unless the licensee or permittee requests an extension of the time for the hearing.

G. At the hearing before the department head, the licensee or permittee shall be given the opportunity to present evidence that either rebuts the ground(s) for

which the summary suspension was issued or demonstrates that the reason or reasons leading to the summary suspension have been mitigated or corrected.

H. The hearing will be conducted informally and technical rules of evidence shall not apply. Any and all other evidence which the department head deems reliable, relevant and not unduly repetitious may be considered.

I. Following the conclusion of the hearing, the department head shall issue a decision which affirms, modifies or overrules the summary suspension, as specified in Subsection J. In connection with a modification of the summary suspension, the department head may impose additional conditions upon the license or permit if those conditions were reviewed at the hearing and the conditions are aimed at protecting the health, safety and welfare of the public or preventing the conduct or condition that lead to the summary suspension.

J. The department head shall issue an oral decision upon conclusion of the hearing or may communicate the decision by telephone, within twenty-four (24) hours of the hearing. The department head shall also mail a written confirmation of the decision within five (5) business days of the close of the hearing to the licensee or permittee at the address stated on the application, license or permit at the time of the summary suspension or at the address provided by the licensee or permittee at the hearing.

SECTION 3. This Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are as follows: (A) there have recently been a series of incidents in the City that have highlighted the need to more strictly regulate the operation of public entertainment venues and how those venues impact the public health, safety and welfare; (B) there is an immediate need for the City to protect those who live in, work in, and visit the areas neighboring public entertainment venues; and, (C) there exists an immediate need for the Chief of Police to have the ability to monitor

and control criminal and nuisance activity stemming from or connected to public entertainment venues in the City.

SECTION 4. This Ordinance shall become effective immediately upon its adoption pursuant to Section 605 of the Charter of the City of San Jose, and shall remain in effect only until February 13, 2006, unless prior to that date further action is taken by the City Council to extend or amend this Ordinance. If no further action is taken by the City Council to extend or amend this Ordinance prior to its date of expiration, Sections 6.02.130 and 6.02.250 shall revert to their previous form as they existed prior to adoption of this Ordinance.

ADOPTED this15th day of November, 2005, by the following vote:

AYES:	CHAVEZ, CHIRCO, CORTESE, LeZOTTE, NGUYEN, PYLE, REED, WILLIAMS, YEAGER; GONZALES
NOES:	NONE
ABSENT:	CAMPOS
DISQUALIFIED:	NONE

RON GONZALES
Mayor

ATTEST:

LEE PRICE, CMC
City Clerk