



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Adoption of Urgency Ordinance
and Approval of Regular
Ordinance Amending Chapters
6.02 and 6.60 of Title 6

DATE: June 1, 2006

RECOMMENDATION

Adoption of an urgency ordinance and approval of a regular ordinance amending Chapters 6.02 and 6.60 of Title 6 of the San Jose Municipal Code:

- (a) Amending Chapter 6.02:
 - (1) To add a new ground for denial, suspension or revocation of a business license or permit when the licensee or permittee conducts the licensed or permitted business in a manner that creates or results in a public nuisance on or within 150 feet of the business premises;
 - (2) To amend two existing grounds for denial, suspension or revocation of a license or permit by extending the period for consideration of prior government action against the licensee or permittee to five (5) years;
 - (3) To create a new Part 1.5 relating to emergency action to abate imminent threats to the public health, safety or welfare; and
 - (4) To move the provision relating to the opportunity to correct in non-emergency situations from Part 2 to Part 1.

- (b) Amending Chapter 6.60 to add an operating regulation and permit condition to the Public Entertainment Business Permit prohibiting the licensee or permittee from conducting the business in a manner that creates or results in a public nuisance on or within 150 feet of the business premises.

OUTCOME

Adoption of proposed urgency ordinance and approval of the superseding regular ordinance will provide the Chief of police with one new and two amended existing grounds for denying, suspending or revoking business licenses and permits that will enhance the ability of the Chief of Police to protect the public health, safety and welfare. It will also immediately and permanently provide the Chief of Police with a more

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meaningful tool by which to summarily suspend, for up to thirty (30) days, a business permit or license when an imminent threat to the public health, safety or welfare exists on or within 150 feet of the licensed or permitted business premises.

BACKGROUND

In November 2005, there were a series of violent criminal 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 the 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 license and permit requirements for various types of businesses, including businesses that are open to the public, sell alcohol onsite and offer live entertainment. Various City department heads, including the Chief of Police, administer the provisions of Title 6 depending on the type of license or permit being issued. Chapter 6.02 of Title 6 sets forth the general procedures for denial, suspension, summary suspension and revocation of licenses and permits issued by the City under Title 6.

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

It was further directed that amendments to the summary suspension provision of Title 6 be brought forward 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.

On November 15, 2006 the Council adopted an urgency ordinance, Ordinance No. 27602, responding to the direction of the Rules Committee. The Council further directed staff to consult with stakeholders to review and develop amendments, if appropriate, to the urgency ordinance and to bring the proposed changes back to Council prior to the sunset of the ordinance. Since that time, the urgency ordinance has

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been extended twice by the Council. At the second extension of the urgency ordinance on May 9th, staff was directed to return to Council with final amendments to the urgency ordinance in June. June 13th is the last day before the urgency ordinance sunsets.

ANALYSIS

A. Amendments to Chapter 6.02

The proposed urgency and regular ordinances, like the original November 15, 2005 urgency ordinance, have amendments to Chapter 6.02 that will apply to all licenses and permits issued under Title 6, including the public entertainment license and permit. 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.

1. Subsection 6.02.130(N)

The proposed ordinances, will amend the language in the urgency ordinance to authorize the Chief of Police to deny, suspend or revoke the permit or license when a licensee or permittee has conducted his business in a manner that creates or results in a public nuisance, as defined under the City's Administrative Nuisance Abatement Ordinance (San Jose Municipal Code Section 1.13.050) and the California Civil Code, on or within 150 feet of the business premises.

As originally stated in the original urgency ordinance, this new subsection (N) of Section 6.02.130, allowed the Chief of Police to consider specified nuisance activity or criminal conduct within 100 ft of the business premises and within 100 feet of any parking lot used by customers of the licensed or permitted business. The amended language of the proposed ordinances will delete the reference in the original urgency ordinance to parking lots and clarify the scope of the owner or operator's responsibility so that a license or permit can only be denied, suspended or revoked if the licensee or permittee has conducted the business in a manner that creates or results in a public nuisance on or within 150 feet of the licensed or permitted business premises. Additionally, the reference to criminal conduct, contained in the original urgency ordinance, has been deleted as redundant since the definition of public nuisance under the City's Administrative Nuisance Abatement Ordinance encompasses criminal conduct.

2. Subsections 6.02.130(L) and (M)

The Police Department and this Office are also proposing amending two existing grounds for denial, suspension or revocation of a license or permit. Currently, in acting on an application for a license or permit or in determining whether to suspend or revoke a current license or permit, the Chief of Police can only consider the denial of a prior

application that occurred in the year preceding the current application. Further, the Chief of Police can only consider a suspension or revocation of a license or permit that occurred in the 4 years preceding the current action.

The Police Department and this Office recommend extending the period for consideration of prior government action against the licensee or permittee, in both instances, to five (5) years. The proposed extension would provide the Chief of Police with an additional tool to protect the public health, safety and welfare by deterring business operators who have a record of noncompliance with business regulations from establishing themselves in San Jose. The proposed amendment would also provide for clarity in that the time provided for consideration of prior acts would be consistent with that provided for in subsection (B) (time within which prior felony convictions can be considered) and subsection (H) (time within which prior nuisance abatement actions and judgments or administrative determinations can be considered).

3. Part 1.5 of Chapter 6.02 - Emergency Action to Abate Imminent Threats to the Public Health, Safety or Welfare - Summary Suspension Procedures

The proposed ordinances also consolidate the summary suspension provisions in the original urgency ordinance into a new Part 1.5 of Chapter 6.02. This new part has a provision (Section 6.02.170) that sets out an informal procedure for resolution of imminent threats to the public health, safety or welfare prior to invoking the formal summary suspension procedure (Section 6.02.180). In turn, this provision has appropriate exceptions that will allow the Chief of Police to protect the public health, safety and welfare by issuing a notice of summary suspension in the event that the attempt to contact the licensee or permittee fails, the licensee or permittee fails or refuses to immediately implement compliance measures that will effectively abate the imminent threat, compliance measures that the licensee or permittee implements are insufficient to effectively abate the imminent threat, or the Chief of Police determines that the threat is so urgent that following the informal resolution procedures will further jeopardize the public health, safety or welfare.

The three imminent threats described in the summary suspension procedure (Section 6.02.180) have been modified, primarily so that each is consistent with the 150 foot radius of responsibility set out in the new ground for denial, suspension or revocation discussed above in this Analysis.

The provision for appeal of the decision of the Chief of Police following an administrative hearing to overrule, uphold or modify a summary suspension has also been revised. Out of consideration for the economic interest of the licensee or permittee who would be subject to a summary suspension, the original urgency ordinance allowed for direct judicial review of the Chief of Police's decision following a hearing. Some business

owners voiced an interest in having an option of seeking an appeal hearing before the City's Appeals Hearing Board. Therefore, the proposed ordinances will provide that a licensee or permittee, who is dissatisfied with the Chief of Police's decision following a hearing, will have an option to appeal the decision to either the Appeals Hearing Board or to accept the administrative decision as final and seek immediate judicial review in Superior Court.

The proposed ordinances also reduce the time period within which the Chief of Police must issue a written decision after the hearing from five (5) days to three (3) business days.

The proposed ordinances also add a number of provisions which clarify both the notice requirements and the hearing requirements for the summary suspension procedure including: adding provisions for notice of hearing and adding provisions that provide for proper service of any notices and decisions issued pursuant to this chapter (6.02.190).

4. Moving Of Provision Relating To Opportunity To Correct In Non-Emergency Situations From Part 2 To Part 1

The proposed ordinances also move the provision relating to the opportunity to correct correctable violations of permit or license conditions or other requirements under Title 6 to Part 1. This will eliminate any confusion that exists between the requirement for written notice and a reasonable opportunity to correct violations in non-emergency situations from the informal resolution procedures applicable in emergency situations.

B. Amendment to Chapter 6.60

The proposed ordinances modify the original urgency ordinance by amending Chapter 6.60 to add a new operating regulation and permit condition to the Public Entertainment Business Permit that prohibits the licensee or permittee from conducting the business in a manner that creates or results in a public nuisance, as specified in San Jose Municipal Code Section 1.13.050 and the California Civil Code, on or within 150 feet of the licensed business premises.

ALTERNATIVES

Not applicable.

PUBLIC OUTREACH

The Police Department and this Office reached out to the relevant stakeholders directly and through the Urgency Ordinance Task Force.

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COORDINATION

This memorandum has been coordinated with the Police Department.

CEQA

Not a project.

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