



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Paul Krutko
Chief Development Officer

Robert Davis
Chief of Police

SUBJECT: Downtown Nightlife: Cost-
Sharing

DATE: January 27, 2009

Approved

Date

1/30/09

RECOMMENDATION

It is recommended that the City Council:

1. Direct the City Attorney to prepare an ordinance to amend the Public Entertainment Permit Ordinance to authorize a change in the fee methodology for the Public Entertainment Business Permit charged to Public Entertainment Businesses operating in the Downtown Entertainment Zone to include costs related to police enforcement of the Public Entertainment Permit Ordinance. Actual Fee increases will be brought forward as part of the 2009-2010 Proposed Budget process.
2. Direct the City Attorney to prepare an ordinance to amend Title 20 of the San Jose Municipal Code to implement a soft-closing program for the Downtown Entertainment Zone to allow bars and nightclubs to stay open until 2:30A.M. with a Conditional Use Permit.
3. Discuss and provide further direction to the Administration on the City Manager's proposed cost model and structure in order to further inform the proposed ordinance amendments directed above.

OUTCOME

Approval of these recommendations will authorize a change in the fee methodology to recover costs associated with police enforcement of the Public Entertainment Permit Ordinance ("Entertainment Ordinance") in the Downtown Entertainment Zone, and allow bars and nightclubs in the Downtown Entertainment Zone the option to stay open until 2:30A.M. under the Soft-Closing Program.

EXECUTIVE SUMMARY

January 27, 2009

Subject:

Page 2 of 15

The City remains at the forefront of public safety for its residents and visitors; however, providing public safety for the Downtown Entertainment Zone remains a challenging and costly endeavor to the City. On average the Police Department deploys approximately 94 officers and 15 sergeants into the Downtown Entertainment Zone each week at a cost to the City of approximately \$830,000 per year.

The Mayor's June Budget Message for Fiscal Year 2008-2009 directed the City Manager to work with nightlife businesses to create a funding mechanism to share in the costs of police enforcement of the Downtown Entertainment Zone, with the goal of reducing the impact to the General Fund. The actions in this memorandum would enable the sharing of these costs by amending the Public Entertainment Permit Ordinance. While the actual fee will be brought forward in the 2009-2010 Proposed Budget process, it is anticipated that a 50/50 cost-sharing model will be recommended.

BACKGROUND

In June 1997, the City Council approved the first Entertainment Zone Policing Plan (EZPP). The EZPP was developed to eliminate secondary employment of Police Officers at nightclubs in the downtown area and now includes the Downtown Services Detail and the "peak load" deployment. This plan sought, in part, to recover the costs of policing the Entertainment Zone and enforcing the provisions of the Entertainment Ordinance through fees paid by nightclubs, based on the nightclub operations and regulations. The Entertainment Ordinance, and the Public Entertainment Business Permit ("Entertainment Permit") authorized by the Entertainment Ordinance, include provisions which require nightclubs to operate their businesses in a manner that is consistent with maintaining public health, safety, and welfare. For example, among other things, nightclubs are required to do the following: ensure that they do not conduct their business in a manner that creates or results in a public nuisance (i.e., disturbances of the peace, illegal drug activity, public drunkenness, illegal gambling, prostitution, acts of violence, public urination, acts of vandalism, acts of lewd conduct, loitering, etc.); have an adequate number of security personnel on staff to deal with problem patrons; ensure that the security personnel does not consume illegal substances or alcoholic beverages while on duty; ensure that if the security personnel are armed while on duty, they are identified to the Police Department; ensure that they are not serving obviously intoxicated individuals; comply with specific noise restrictions; queue waiting lines so as not to interfere with the public's right of way; refuse the admission of persons under twenty-one (21) years of age; comply with occupancy restrictions set by the Fire Marshal; hire only event promoters that are backgrounded and permitted by the City or agree to legally accept all responsibility for promoted events; and, immediately communicate with the Police and Fire Departments when there is an imminent threat to public safety.

Though approved by the City Council, the EZPP was not fully implemented as the nightclubs were never required to pay any of the costs associated with the policing of the Entertainment Zone and the enforcement of the Entertainment Ordinance. As a result, the Police Department has incurred overtime expenditures amounting to an annual cost of roughly \$824,000 (Table 1) to enforce the Entertainment Ordinance and maintain public safety in the Entertainment Zone.

The downtown core has developed into a dynamic and unique geographic area due to the concentration and interactions of its residents, businesses, and visitors. As this evolution is occurring, changes are underway to improve the downtown atmosphere where residents, businesses, visitors, and police personnel can more effectively interact to ensure the appropriate level of public safety is maintained. Police calls for service reflect the public's health, safety, and welfare in the Entertainment Zone is largely contingent upon the regulation of nightclubs, where most of the problems requiring a special level of public safety enforcement continue to originate. These problematic activities draw upon valuable public safety resources above what is programmed at a "base" level in the downtown.

This memo has been prepared in response to the Mayor's June Budget Message for Fiscal Year 2008-2009 to "work with operators of nightlife businesses in the Downtown to create a funding mechanism and staff scope of services for a new Downtown Nightlife Staffing Model that would improve the nighttime experience downtown while reducing the reliance upon the General Fund for nighttime policing costs."

In addition, the City Council's action on April 29, 2008 directed staff:

- "To bring Council a proposal to re-implement a 'soft closing' program – with whatever geographical or temporal limitations that the City Manager may recommend – on a permanent basis."
- "Direct the City Manager that with whatever plan for cost-sharing is formulated in the coming weeks, a substantial portion of the fee revenues will be used to support the 'downtown liaison' position within the City Manager's office, as well as funding other collaborative efforts to improve the downtown safety and environment, such as trainings for club security, soft closing, and security-enhancing technology."

Following the Council direction above, staff began to research the City's current policing model for the Entertainment Zone while studying other enhancements, as directed, during discussions with the nightclubs. Several of the nightclubs and bars organized to form the San Jose Restaurant and Entertainment Association ("SJREA") in order to work with the City. The current SJREA membership is comprised of roughly 65% of the nightclubs and bars in the downtown. In addition, the City Manager's Downtown Coordinator met with the San Jose Downtown Association (SJDA) on several occasions and outreached to nightclubs not represented by the SJREA or SJDA to begin a similar discussion.

On June 19, 2007, the City Council approved an ordinance establishing a limited Soft-Closing Pilot program, which allowed bars and nightclubs and restaurants located in specific locations of the downtown. This program lasted for a period of 180 and sunset on January 23, 2008.

ANALYSIS

Consistent with City Council direction, staff recommends a change in the fee methodology for the Entertainment Permit (which is authorized by the Entertainment Ordinance) to allow cost recovery for the cost of the Police Department to enforce the Entertainment Ordinance in the Entertainment Zone. Generally, a fee tied to a regulatory permit, such as the Entertainment Permit, cannot exceed the sum reasonably necessary to cover the costs of the regulatory purpose sought. These costs include all services related to the issuance of the permit: investigation, inspection, administration, maintenance of a system of supervision and enforcement of the provisions of that permit and any ordinance authorizing that permit. In addition, fees in amounts necessary to carry out the ordinance's purpose are valid despite the absence of any perceived "benefit" accruing to the fee payers.

In this instance, the proposed change in the fee methodology would allow a fee to be charged to the nightclubs in the Entertainment Zone and may be added onto the already existing fee currently charged to the nightclubs for an Entertainment Permit. The current fee for the Entertainment Permit reflects full-cost recovery for the services related to the Entertainment Permit on the front end, such as review of the application for the Entertainment Permit, investigation of the individuals applying for the Entertainment Permit and inspection of the entertainment business premises. The current fee does not include administration of the system, maintenance of a system of supervision or, most importantly, any type of enforcement. Though inclusion of the cost for enforcement was attempted in 1997 and Council passed an ordinance authorizing cost recovery for enforcement, the ordinance was repealed before fees were collected from the nightclubs.

While the City is currently not considering full-cost recovery for the enforcement of the Entertainment Ordinance it is important to note that a link between the problems generated from the nightclubs and the need for special police staffing in the Downtown Entertainment Zone on Thursday, Friday, and Saturday nights can be easily seen in the statistics for calls for service in the Downtown Entertainment Zone versus calls for service in any other District in the City, and thus drives the demand for the City's current deployment for the Entertainment Zone (Attachment A).

Therefore, staff requests Council adopt its recommendations for an ordinance which will authorize a change in the fee methodology for the Entertainment Permits issued to those nightclubs operating in the Entertainment Zone. Actual Fee increases will be brought forward as part of the 2009-2010 Proposed Budget process. A preliminary estimate of the costs and fee methodology is further explained below.

Current San Jose Police Department Downtown Deployment Model and Soft-Closing Pilot Re-Implementation

Current San Jose Police Department Downtown Deployment Model

With only seven officers and one sergeant, the Downtown Services Detail (DSD) cannot adequately enforce the Entertainment Ordinance in the Entertainment Zone. In order to increase

police staffing during critical times, the Police Department uses a “peak load” demand system to address the staffing issue. In so doing, a large number of police officers are deployed for a relatively short period of time (1:00 A.M. – 3:00 A.M.). The service delivery goal is to deploy the existing workforce in an efficient manner for that peak time. This method does not require the addition of new positions, new safety equipment, new vehicles or other such expenses. The current “peak load” staffing component is comprised of officers that are assigned to work the Entertainment Zone on overtime. Compensating officers with overtime also gives the Police Department flexibility since the number of officers needed on any given night must be estimated and can fluctuate. This practice also lessens the impact on the rest of the patrol force, enabling officers to remain in other parts of the City.

These overtime officers complete their regular shift assignment and are then assigned to work the Entertainment Zone for two overtime hours, from 1:00 A.M. to 3:00 A.M. (Thursday, Friday, and Saturday). On average the Police Department deploys approximately 94 officers and 15 sergeants into the Entertainment Zone each week.

Soft-Closing Pilot Re-Implementation

During the April 29, 2008 Council Meeting the City Council directed the City Manager to return to Council with a proposal to re-implement the soft-closing pilot program on a permanent basis. In addition, during several outreach meetings nightclub owners expressed a desire to continue with the soft-closing program and have better coordination with the Police Department for closing procedures.

Staff believes that this could be an important step to help reduce the number of police officers who are deployed during “peak load” hours. Therefore, staff is recommending an ordinance be drafted authorizing the re-implementation of the “soft-closing” program on a permanent basis to allow nightclubs and bars, in the Downtown Entertainment Zone, the option to stay open until 2:30 A.M. Staff believes reestablishing the geographical location of the soft-closing program to the Downtown Entertainment Zone will allow the City to successfully gauge the impact of the program.

The current dynamic that occurs at close of business for the nightclubs is that thousands of patrons pour into the streets nearly simultaneously. If the Soft Closing program is approved, venues will have the option to offer food service and prolonged socializing. Alcoholic beverages will not be allowed to be sold or served past 2:00 a.m. Nightclubs clustered together in the Entertainment Zone would have the ability to work with one another to stagger closing times, further assisting the police. Such a program should facilitate a more gradual egress of thousands of patrons from downtown and is intended to ease the crowd management burden on police, reduce traffic congestion, and potentially lessen impaired driving.

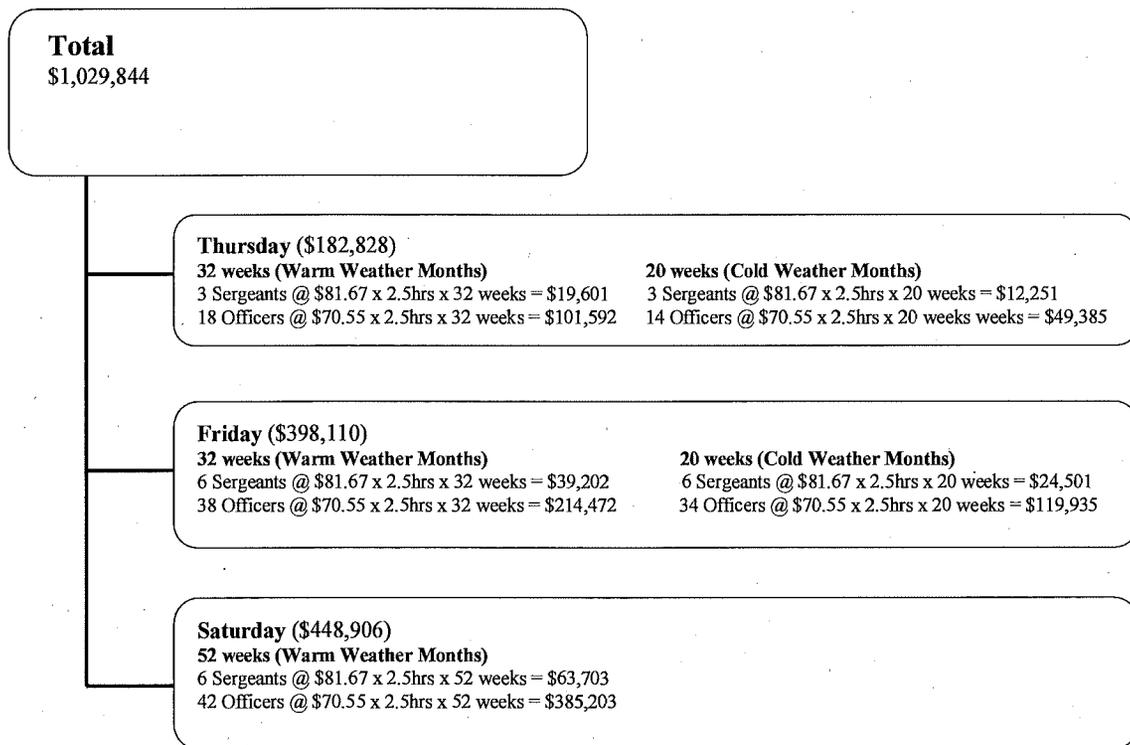
The soft-closing will be an option and venues who wish to participate will be required to apply for an amendment to their Entertainment Permit and their Conditional Use Permit. In addition, venues will have the opportunity to coordinate closing procedures with the City Manager’s

Downtown Coordinator and the Police Department. This should aid the City's goal of a closer working relationship with the police officers assigned to the Entertainment Zone, better customer satisfaction, reduction of police enforcement expenses in the Entertainment Zone, and increased autonomy and self-regulation of business operators.

It should be noted that this will drive the police overtime costs up initially because the soft-closing program adds an additional 30 minutes (3:00 A.M. – 3:30 A.M.) to the police "peak load" deployment model, thus short-term this will be an extra cost. Staff will be studying the program's effectiveness in reducing the number of police officers under the "peak load" deployment model.

Figure 1 illustrates the City's current average cost of deployment for Thursday, Friday, and Saturday with the new soft-closing program figures.

Figure 1 - Current "Peak Load" Deployment Model with Soft-Closing



Nightclub Stakeholders Recommendations

In development of this proposal, staff used the current police "peak load" deployment model and the costs associated with that model as a starting point for discussions. During these discussions representatives from SJREA and other nightclub owners recommended the following:

1. Elimination of Police Overtime Costs to Patrol the Downtown

2. Training Officers for Entertainment Zone Patrol

3. Introduction of Roving Patrol

Elimination of Police Overtime to Patrol the Downtown

During discussions, nightclub owners expressed opposition to paying for police overtime. In order to demonstrate why the City is better served by compensating Entertainment Zone Police Officers with overtime versus straight time several factors must be considered. Among them are:

- The San Jose Police Department's Five-Year Staffing Plan
- Resource Allocation
- Cost Effectiveness

The San Jose Police Department has developed a five-year staffing plan to address staffing needs for both sworn and non-sworn personnel. The plan was designed to account comprehensively for existing personnel throughout the Department that serve the entire City. The recommended staff increases reflect the level of immediate improvement sought by the Police Department to deliver quality police services to the community. Hiring new officers to police the Entertainment Zone during selective hours would hinder the ability of the City to allocate the new police officers to other parts of the City where they are needed.

The Entertainment Zone currently uses regular pay officers as part of the Downtown Services Detail. The "peak load" officers are used in addition to this team, and as discussed above are essential to the enforcement of the Entertainment Ordinance and therefore the overall public safety of the downtown. There is cost savings using overtime rather than additional officers. Based on current year costs, an officer's overtime pay rate is \$70.55 per hour. The cost to the City when compensating an officer for regular time is \$73.65. The reason for this higher cost is that in addition to regular "base" pay, the City compensates for benefits, retirement and fringe. An officer's overtime is paid at a rate of 1 1/2 times "base" pay only. This base pay is established prior to the City's contribution for benefits, retirement and fringe.

This also does not take into account the expense of the hiring and training of a new police officer, or the fact that it takes approximately 18 months from the time the officer is recruited until the new officer is ready to work as a solo-beat officer.

Training Officers for Entertainment Zone Patrol

Several of the nightclubs expressed their displeasure with paying for Police Officers who have not been trained to enforce the Entertainment Ordinance or patrol an Entertainment Zone. Across the country, community policing in hospitality zones is a new coordinated approach being implemented to prevent and reduce crime, accidents, and conflicts as evening and late night activity increases in concentrated areas. Acknowledging that hospitality zones place particular demands on the safety personnel assigned to them, staff will be reviewing existing police training programs to include special needs trainings for the Downtown Entertainment Zone officers and report back to the City Manager's Downtown Advisory Committee.

In addition, the City Manager's Downtown Advisory Committee will be exploring more collaborative prevention trainings aimed at awareness, server training, and management training for nightclubs.

Introduction of a Roving Patrol

During discussions with the SJREA, the group introduced the idea of a "roving patrol" that would start at 10:00 P.M. and end one hour past the City's soft-closing time (3:30A.M.). SJREA believes that having police officers downtown earlier and out of their patrol cars would lead to a better overall environment and possibly cut down on the number of officers who are deployed at 1:00A.M.

Staff has agreed to explore this model and suggests adding one roving patrol made up of one sergeant and six officers who would be deployed on Thursday, Friday, and Saturday nights. The total annual forecasted cost for this is **\$433,260**. No additional police officers have been added to this model. The roving patrol officers have been taken from the "peak load" deployment.

Figure 2 illustrates the City's proposed "peak load" deployment, which includes the roving patrol and soft-closing. The total forecasted annual cost of the deployment is \$1,259,117 which is an increase to the current model (Table 1). However, the soft-closing program and roving patrol have the potential to drive costs down over the long run. The proposed "peak load" deployment and the costs associated with it will be closely studied by the Police Department and the City Manager's Downtown Advisory Committee to ascertain if reductions can be made. However, at this time it is important that the City budgets its resources based on past experiences and not on the potential success of these new enhancements.

Figure 2 – Proposed “Peak Load” Deployment

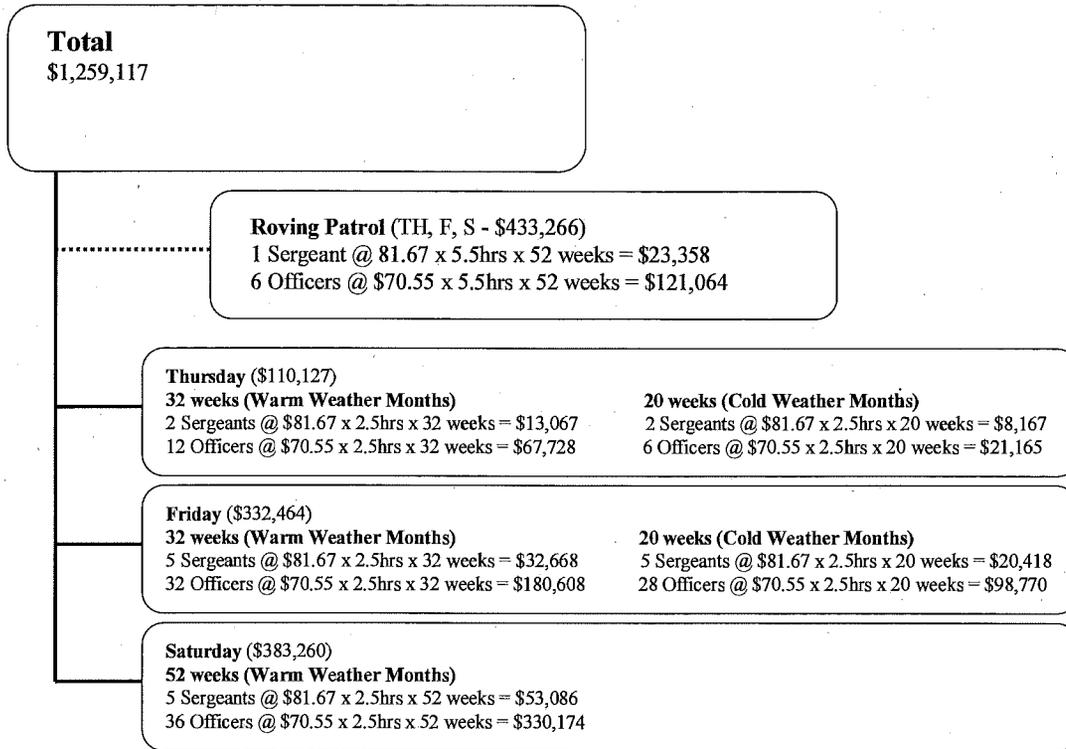


Table 1 - Police Deployment Model Cost Comparison

	Current Model	Current Model with Soft Closing	Proposed Model
Roving Patrol	N/A	N/A	\$433,266
Thursday	\$146,263	\$182,828	\$110,127
Friday	\$318,488	\$398,110	\$332,464
Saturday	\$359,124	\$448,906	\$383,260
Total	\$823,875	\$1,029,844	\$1,259,117

Staff Recommendations

Staff is proposing the total annual police costs for enforcement of the Entertainment Ordinance in the Entertainment Zone be shared equally between the City and nightclubs. Nightclubs would be responsible for half of the total annual costs.

For example, based on current costs the new proposed “peak load” deployment for FY 2009-2010, the total forecasted cost of \$1,259,117 would be divided in half and shared equally between the City and the nightclubs. Under these forecasted costs **nightclubs would only be responsible for \$629,559 of the total costs starting in FY 2009-2010, based on current costs.**

Proposed Funding Mechanism

Staff is proposing an amendment to the Entertainment Ordinance that would authorize a change in the fee methodology for the Entertainment Permit charged to Public Entertainment Businesses operating in the Downtown Entertainment Zone to include costs related to police enforcement of the Entertainment Ordinance. While the fee methodology will be refined and brought forward during the 2009-2010 Proposed Budget process for review and approval, a sample of the fee structure being explored by staff is detailed below.

This fee is anticipated be based on a nightclub’s occupancy level. If approved, this increase would be collected at the beginning of every fiscal year, beginning July 1, 2009. Staff recommends limiting the fee increase to venues in the Entertainment Zone, because the number of calls for service generated by nightclubs in this area is disproportionately higher than in any other area in the City, which drives the demand for police services in the Entertainment Zone (Attachment A).

To calculate this fee the City will use the Fire Marshal’s occupancy numbers for each nightclub to establish the annual rate. According to the current records from the City’s Fire Marshal, the total nightly occupancy allowed for 26 permitted venues in the Entertainment Zone is 10,405 patrons. Based on this figure and the fact that the proposed “peak load” deployment model for Thursday, Friday, and Saturday nights is needed year round, the total Allowable Yearly Occupancy (AYO) allowed is 1,623,180 (Table 2).

Table 2 – Allowable Yearly Occupancy

10,405	Allowable Nightly Occupancy
x 3	(TH, F, & S)
x 52	Weeks
1,623,180	Allowable Yearly Occupancy

The AYO would be divided by the total annual cost with a 50% cost sharing to establish a cost per patron rate. Using the current funding levels for the proposed “peak load” deployment” model, this figure is **\$0.39 per patron.**

$$\mathbf{\$629,559 \text{ (Total Cost for Nightclubs)} / 1,623,180 \text{ (AYO)} = \mathbf{\$0.39 \text{ per patron.}}$$

This calculation may be used annually to establish the fee for each permitted establishment in the Entertainment Zone. Attachment B outlines the projected costs to each nightclub starting in FY 2009-2010, based on current costs.

Compared to the average cover charge, which is roughly \$20 per patron, the proposed methodology would increase the regulatory fee \$0.39 per patron at current year costs, which is equal to less than 2% of what the nightclubs collect at the door per patron, before alcoholic beverages are even purchased. Staff believes this is a conservative projection, because nightclubs have a large turnover rate, two to three times per night; therefore, in reality the cost per patron could be significantly less for the clubs than a \$0.39 per patron figure. Actual recommended fee increases will be brought forward as part of the 2009-2010 Proposed Budget process.

Conclusion

A City Council action in June 1997 established the Entertainment Zone Policing Plan (EZPP); however, a change in the methodology of issuing Public Entertainment Business Permits to recover costs associated with patrolling the Downtown Entertainment Zone was never fully implemented. To date, significant outreach and study has been completed through the Downtown Working Group and Hospitality Zone Assessment report. In addition, significant outreach has been conducted with not only nightclubs, but residents, businesses, and possible future businesses.

The newly established City Manager's Downtown Advisory Committee will hear regular updates on the police deployment model to determine if modifications should be made over time. The true benchmark for the roving patrol and soft-closing program will be to measure its effectiveness on the number of police officers that are deployed from 1:00 A.M. to 3:30 A.M.

For these reasons staff is recommending Council direct staff to draft an ordinance to change the fee methodology for Entertainment Permits, which will cover enforcement of the Entertainment Ordinance for clubs operating in the Entertainment Zone with an Entertainment Permit. In addition to lessening the impact to the City's General Fund, the City will enter into an innovative public/private partnership where both the City and businesses work mutually to improve the downtown nightlife experience. Actual recommended fee increases will be brought forward as part of the 2009-2010 Proposed Budget process.

At this time the administration is not recommending the increase in the Entertainment Permit fee include funding for the City Manager's Downtown Coordinator, as funds collected from the Permit fee can only be used for administration and enforcement costs.

EVALUATION AND FOLLOW-UP

If approved the City Attorney's Office will return to the City Council with draft amendments to the Entertainment Ordinance and Title 20 of the San Jose Municipal Code to allow for a change

in methodology to the Entertainment Permit fee and to implement the Soft-Closing Program, respectively. If approved, the new fee methodology would be implemented and a fee revision would be brought forward for Council consideration as part of the 2009-2010 Proposed Budget. In addition, the City Manager's Downtown Advisory Committee will be monitoring and evaluating the financial impacts of implementing the Soft-Closing Program on a permanent basis.

POLICY ALTERNATIVES

While no fee is being proposed in this memorandum, the recommendation would establish a cost-sharing option. The level of cost-sharing currently being evaluated by staff for future recommendation is a 50/50 split, with the City and the Entertainment Zone businesses. Other alternatives are discussed below.

Alternative 1: Cost Sharing – Sliding Scale

To reduce the impact on smaller nightclubs the City could exempt the first fifty patrons from the occupant load-based fee. This would result in a larger per patrons cost to reach \$629,559 figure.

Currently projected to cost: \$1,259,117 (\$629,559 or \$0.44 per patron covered by nightclubs, compared to the \$0.39 proposed by staff.)

Pros: There is a cost saving for the City and nightclub industry and smaller venues would be less impacted under this model.

Cons: Under this model large nightclubs would pay an additional cost.

Reason for not recommending: Does drive the overall cost per patron up which puts additional pressure on the mid-level and large nightclubs.

Alternative 2: Cost Sharing - Charge increased fee equal to half the Current "Peak Load" Deployment Model with Soft-Closing

Currently projected to cost: \$1,029,844 (\$514,922 or \$0.32 per patron covered by nightclubs, compared to the \$0.39 proposed by staff.)

Pros: There is a cost saving for the City and nightclub industry. While some disagree on the number of officers that are needed to patrol the Entertainment Zone, there is no one who would disagree that at least 50% of the current model is needed, and therefore the nightclubs should cover those costs.

Cons: No improvements, with the exception of the soft-closing program, have been made to the deployment model as directed by Council.

Reason for not recommending: Without any enhancements the long-term goal of reducing the City's "peak load" deployment is diminished.

Alternative 3: Full Cost Recovery – Charge increased fee equal to Current "Peak Load" Deployment Model with Soft-Closing

Given the City's current budgetary obstacles Council could seek an increased fee that would seek full cost recovery of the police overtime "peak Load" deployment.

Currently projected to cost: \$1,029,844 (\$1,029,844 or \$0.63 per patron covered by nightclubs, compared to the \$0.39 proposed by staff.)

Pros: This would result in 100% cost recovery.

Cons: No improvements, with the exception of the soft-closing program, have been made to the deployment model as directed by Council.

Reason for not recommending: Without any improvements the long-term goal of reducing the City's "peak load" deployment is diminished. Staff feels it is more appropriate to approach this cost sharing model as a public/private partnership where both the businesses and the City work collaboratively to improve conditions and keep costs down.

Alternative 4: Secondary Employment for Entertainment Zone Police Model

The SJREA has proposed a financing authority via a Business Improvement District (BID), Property Owners Business Improvement District (PBID), Community Facilities District (CFD) or other assessment district.

Pros: Nightclubs would be responsible for public safety in the downtown core. Secondary employment officers would have the ability to call on-duty officers to make arrests.

Cons: The City administration is strongly opposed to the use of secondary employment as a means of policing the Downtown Entertainment Zone for several reasons. There is a direct financial conflict of interest that arises if private businesses of an industry which is heavily regulated at both the State and Local levels are allowed to employ Police Officers. If an employee's outside work activities put him or her in a position where his decisions as a City employee could foreseeably have a material effect on his personal financial interests, a conflict of interest is created. As described earlier, the City Council abolished secondary employment in the downtown Entertainment in 1997 for these reasons.

Section 3.04.1710 (A) of the San Jose Municipal Code (SJMC) states, in relevant part, that "No employee shall engage in any work, employment, or occupations outside his city employment, which is detrimental to the service, which prevents or impedes the efficient performance of his duties in city employment, or which is in any way with his employment by the city..." Simply stated, officers working secondary employment would not be directly accountable to on-duty supervisors in the Entertainment Zone, and on duty supervisors would lose the ability to direct personnel to areas of need. In addition, if secondary employment officers are involved in an arrest, they would subsequently call for on-duty personnel to process and transport their prisoner. Because on-duty police officers would be needed in this model it would only double the amount of resources that are deployed downtown.

Officers working secondary employment are primarily in place to deter any criminal acts and to take immediate action if some type of crime is occurring and then call on-duty officers to assist. Secondary employment is most frequently used for situations such as traffic control, monitoring school events, assisting with parade routes, or providing on-site security for a business.

Reason for not recommending: There is a direct financial conflict of interest that arises if private businesses of an industry which is heavily regulated at both the State and Local levels are allowed to employ Police Officers.

PUBLIC OUTREACH/INTEREST

- Criterion 1: **Requires** Council action on the use of public funds equal to \$1 million or greater.
(Required: Website Posting)
- Criterion 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3: Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Approval of this recommendation does not meet any of the criteria stated above; however, this memorandum will be posted on the City's website for the February 10, 2009 City Council agenda. In addition, the City Manager's Downtown Coordinator will be meeting with the SJREA, SJDA, and other nightclubs not represented by these groups to review the staff recommendation and provide information on the hearing date.

COORDINATION

This memorandum and related documents and resolutions were prepared in cooperation with the City Manager's Budget Office, the San Jose Redevelopment Agency, the Planning, Building, and Code Enforcement Department, and the City Attorney's Office.

COST SUMMARY/IMPLICATIONS OF PROPOSED MODEL

The 2008-2009 budget for overtime for police enforcement in the Entertainment Zone is \$641,000, and the projected expenditures in 2008-2009 for Overtime in the Entertainment Zone is \$800,000. The Department will absorb the additional costs in its Personal Services appropriation through full-time salary savings. The potential cost of implementing soft closing and adding the roving patrol would increase the costs for overtime in the Entertainment Zone to approximately \$1,259,000, based on current year costs. Staff is recommending sharing these costs evenly between the City and permitted establishments in the Entertainment Zone. The cost to the City is estimated at approximately \$629,600 (savings of approximately \$11,400 compared to the current Entertainment Zone Overtime budget and \$170,400 compared to the projected expenditures). The cost to the club owners, based on the current cost of Police overtime, would be \$0.39 per patron based on club occupancy that is set annually by the Fire Marshal. The range of the increase in the Entertainment Permit fee is estimated, at this time, to be \$2,965 for the smallest club and up to \$82,590 for the largest club. The actual fee revision for implementation in July 2009 will be brought forward as part of 2009-2010 Proposed Budget process.

Honorable Mayor and City Council

January 27, 2009

Subject:

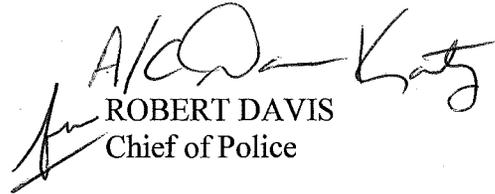
Page 15 of 15

CEQA

Not a project.



PAUL KRUTKO
Chief Development Officer



ROBERT DAVIS
Chief of Police

For questions, please contact Lee Wilcox, Downtown Coordinator, at (408) 535-8172.

ATTACHED: Attachment A & Attachment B

ATTACHMENT A

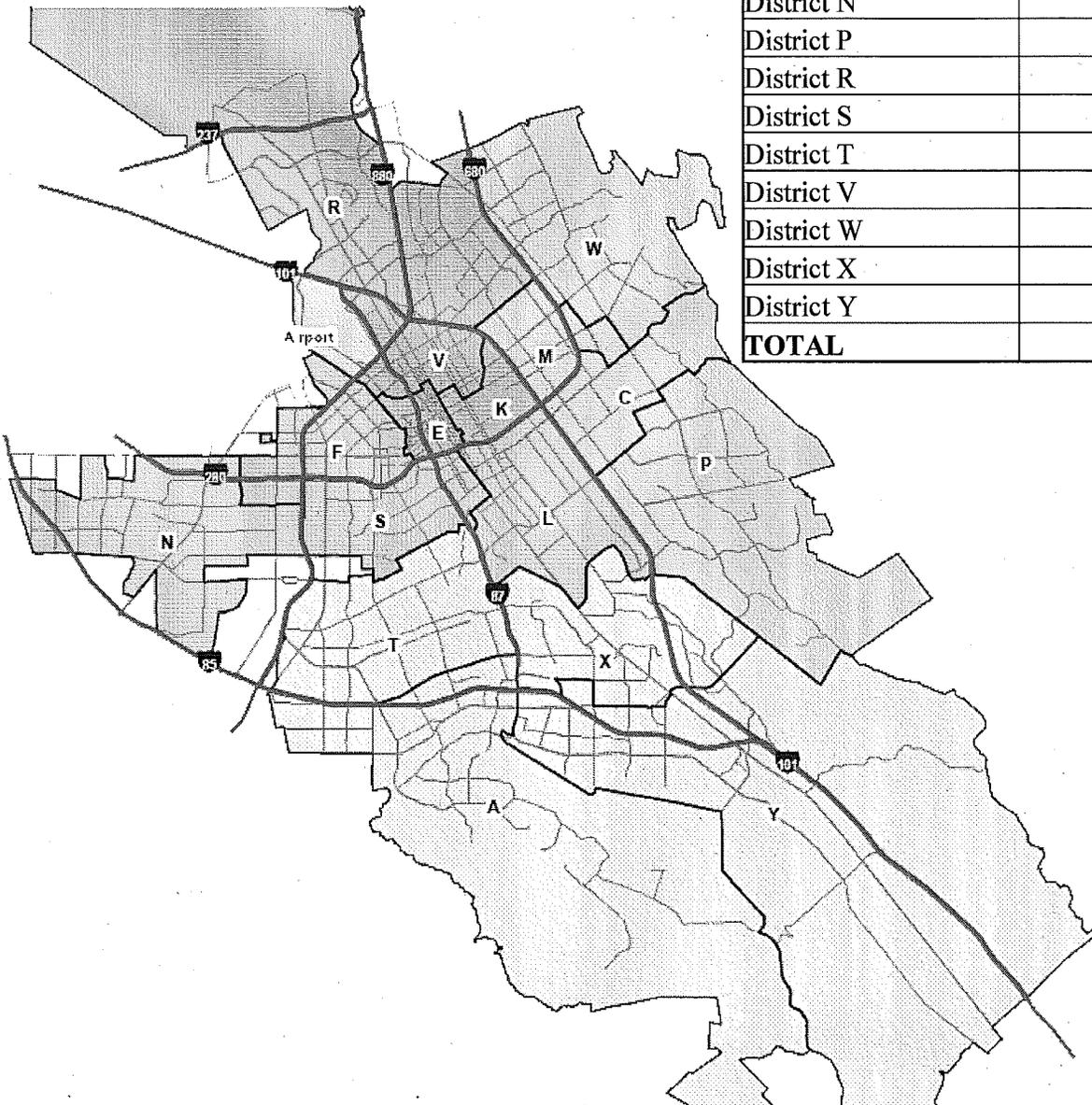
Calls for Service

Time Period: 1/1/08 – 6/30/08

Days: Thursday – Sunday

Hours: 8:00P.M. – 3:00A.M.

POLICE DISTRICT	Calls for Service
District A	1872
District C	2280
District D	577
District E	3157
District F	1718
District K	1966
District L	2455
District M	2124
District N	1928
District P	2197
District R	1865
District S	1919
District T	1524
District V	1484
District W	1538
District X	2681
District Y	2547
TOTAL	33832



ATTACHMENT B

Business	Occupancy	Cost*
Agenda Lounge	703	\$42,535
Blank Club	188	\$11,375
Britannia Arms	246	\$14,884
Caravan	88	\$5,324
Cuccini's/Sabor Tapas Bar and Grill	567	\$34,307
Dive Bar	91	\$5,506
Fahrenheit Ultra Lounge	292	\$17,668
Hunter's Video Bar	163	\$9,862
Johnny V's	49	\$2,965
Lido Club	515	\$31,160
Loft Bar and Bistro	209	\$12,646
Miami Beach Club	945	\$57,178
Milano's	555	\$33,581
Mission Ale House	239	\$14,461
Motif Restaurant and Club	805	\$48,707
San Jose Bar and Grill	250	\$15,126
Smoke Tiki Lounge	435	\$26,320
South First St. Billiards	299	\$18,091
Splash Bar	172	\$10,407
Temple Bar	130	\$7,866
Toons	299	\$18,091
Tres Gringo Baja Cantina	250	\$15,126
Vault Ultra Lounge	329	\$19,906
Vivid Nightclub	1365	\$82,590
Voodoo Lounge	292	\$17,668
Wet	929	\$56,210
Total	10405	\$629,559

* Based on 2008-2009 staffing costs and the fee methodology being evaluated by staff; actual fee methodology will be brought forward as part of the 2009-2010 Proposed Budget process.