



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Paul Krutko
Chief Development Officer

SUBJECT: PUBLIC ENTERTAINMENT
PERMIT ORDINANCE REVISIONS

DATE: June 1, 2010

Approved

Date

6/8/10

COUNCIL DISTRICT: Citywide

RECOMMENDATION

- A. Direct the City Attorney to prepare an ordinance to amend the Public Entertainment Permit Ordinance to authorize the following changes:
1. The security requirement be amended to one (1) security guard for every fifty (50) patrons on site, up to the actual occupancy limit;
 2. The security requirement be amended to require security personnel to start their shift when entertainment begins or not later than 9:00PM, which ever occurs first;
 3. The term of the Public Entertainment Permit from two (2) years, to a potential four (4) year Permit conditioned on a successful two (2) year review with a two (2) year extension;
 4. Create a renewal process for the Public Entertainment; and,
 5. Amend the process to obtain a "Manager's License" to only require information pertinent to the applicant and not the business.

OUTCOME

Approval of this recommendation will result in the City Attorney returning to Council with an ordinance which aims to create more flexibility and streamline the Public Entertainment Permit Ordinance process.

BACKGROUND

Title 6 of the San Jose Municipal Code (“Code”) governs police-issued regulatory permits for various businesses operating in the City. Chapter 6.60 of Title 6 of the Municipal Code, entitled “Public Entertainment Permit,” requires businesses that are open to the public, where alcohol is sold on the premises and entertainment is provided or allowed to have a permit. Chapter 6.60 also requires every individual that has an ownership interest in the business and every manager engaging in management duties for the business to each have an entertainment ownership/management license. The process to obtain an entertainment business permit or ownership/management license is initiated after approval of a Conditional Use Permit or Planned Development Permit by the Director of Planning allowing for the subject property to be used for a drinking establishment.

The Public Entertainment Permit Ordinance (“Entertainment Ordinance”) was adopted by the City Council in 1995. The goal of the Entertainment Ordinance was to provide the City with a tool that would assist the City in protecting the health, safety, and welfare of those persons working, living and playing in the City.

On January 14, 2010, the City Council adopted an Urgency Ordinance which made immediate changes to the Entertainment Ordinance based on legal concerns that arose from threatened litigation. Based on these changes, the Entertainment Ordinance now requires a business to obtain a Public Entertainment Permit (“Permit”) from the Chief of Police if that business is open to the public, selling alcohol on the premises, has an occupancy load greater than 100 persons and provides or allows one or more of the following activities at the premises:

1. dancing;
2. singing;
3. audience participation in the entertainment; or
4. live entertainment.

To avoid any appearance of favoritism towards one business over the other, changes were also made to the Entertainment Ordinance which set forth clear and limited grounds for granting or denying a Permit and for setting forth provisions within that Permit. The changes brought about by the Urgency Ordinance also resulted in a time certain by which the Chief of Police must act upon an application for a Permit.

In addition to adopting the Urgency Ordinance, Council directed the City Manager and the City Attorney “to continue their work to seek further input of stakeholders on the structure of the entertainment permit system and other alternatives which would serve the goals of providing a safe environment for patrons and residents while promoting a vibrant nightlife for the City.”

Community Outreach

In December 2009, the City began outreach efforts with entertainment venues to discuss the urgency changes and to obtain input on further revisions. The outreach process consisted of small group meetings and two citywide meetings, with a goal of building broad agreement between the City and the stakeholders.

During the first citywide meeting, the City and stakeholders focused their discussion on the following questions:

1. What aspects of an entertainment venue's operations should be regulated?
2. What is the process to obtain a Permit?
3. Who needs to be regulated under the Entertainment Ordinance?

Stakeholders repeatedly stated revisions should focus on flexibility, process and costs. During the second citywide outreach meeting, staff presented draft recommendations to stakeholders and clarified any questions that remained. The point of this second meeting was to build agreement around five recommendations developed by City staff in response to the stakeholders' concerns. These recommendations were as follows:

1. The security requirement be amended to one (1) security guard for every fifty (50) patrons on site, up to the actual occupancy limit; and,
2. The security requirement be amended to require security personnel to start their shift when entertainment begins or no later than 9:00PM, whichever occurs first.
3. City Manager recommends changing the term of the Public Entertainment Permit from two (2) years, to a potential four (4)-year Permit conditioned on a successful two (2) year review. If no problems exist at the 2-year review, the Permit is extended for an additional (2) years.
4. City Manager recommends a renewal process be created for the Public Entertainment Permit.
5. City Manager recommends the process to obtain a "Manager's License" be amended to simply require information pertinent to the applicant and not the business.

These recommendations are further explained in the "Analysis" section of this memorandum. Stakeholders responded favorably with all five recommendations and asked if staff could further research the possibility of using the frequency of entertainment as a means as defining entertainment.

In addition to the small group meetings and citywide outreach meetings, the City Manager's Downtown Advisory Committee discussed possible further revisions at their January and April 2010 meetings. Throughout this process, stakeholders repeatedly stated flexibility, process and cost of the Permit and measures they would need to take to comply with the Entertainment Ordinance and the terms of their Permit as the main concerns that needed to be addressed. In

addition, many stakeholders wanted to create more flexibility for venues that have occasional live music.

ANALYSIS

What areas of an entertainment venue should be regulated?

Currently, the Entertainment Ordinance in conjunction with the Permit regulates the operations of an entertainment venue. These regulations include requirements that entertainment venues do the following:

- Ensure that business is not conducted 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, 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 permitted by the City or agree to legally accept all responsibility for events promoted by those event promoters; and
- Immediately communicate with the Police and Fire Departments when there is an imminent threat to public safety.

In regards to the security personnel requirement, while the stakeholders acknowledged the necessity of this component, in terms of cost to their respective venues, they indicated an interest in exploring additional ways of fulfilling the requirement. Currently, the Ordinance requires an entertainment venue to have two (2) security guards for every one-hundred (100) patrons on site. Stakeholders stated during the outreach process that they wished this security requirement had more flexibility. For example, if an entertainment venue has a maximum occupancy load of 109 persons, they are required to have four security guards, which is the same requirement for an establishment with an occupancy of 199. Staff agrees that this requirement could be more flexible.

In addition, owners expressed a desire to change the requirement for having all security personnel on-duty when the establishment opens. Many smaller entertainment venues function

as a drinking establishment when they first open in the mid-afternoon to early evening. The establishments often do this to capture "happy hour" crowds and often do not start entertainment until later in the evening. The security demands of a drinking establishment and entertainment venue vary. The demands for security that a drinking establishment that has entertainment generates are what cause the need for regulation of these businesses. Based on these concerns staff recommends as follows:

- 1. The security requirement be amended to one (1) security guard for every fifty (50) patrons on site, up to the actual occupancy limit; and,**
- 2. The security requirement be amended to require security personnel to start their shift when entertainment begins or no later than 9:00PM, whichever occurs first.**

These changes will provide more flexibility for venues functioning as a drinking establishment and also allow entertainment venues to base their security personnel on actual occupancy on site, rather than maximum occupancy. To explain, if Nightclub A has a maximum occupancy of 500, but only has 200 patrons the venue will base their security personnel levels at 200, which would be four. Entertainment venues have strict requirements to keep an accurate patron count at all times, which will allow the City to ensure these security requirements are being met.

The Process to obtain a Public Entertainment Permit.

In 2008, consistent with City Council direction, the Police Department conducted a review of the fees and charges for permits the Department administers. The review indicated the fees for the Public Entertainment Business Permit ("Permit") and the Public Entertainment Ownership / Management License ("License") were not recovering the full cost for staff time. Instead, only 38.3% of the cost to process a Permit or License was being recovered by the City. As part of the 2008-2009 Budget: Public Safety Fee Change, Council approved increasing the fees to align the Permit and the License with the full cost of issuing the Permit and License. Since that time entertainment venues have repeatedly expressed a desire to cut costs. To cut City costs, entertainment venues recommended a revised application review process to obtain a Permit or License.

To process an application the City currently requires the following:

- A. Application Questionnaire
- B. Affidavit
- C. Authorization for Release of Information
- D. Copy of current Health Permit
- E. Copy of current Business License Tax Certificate
- F. Copy of full Alcohol Beverage Control (ABC) license, including all conditions attached to the issued license.

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- G. Copy of San Jose Fire Department Inspection, including occupancy maps which are signed and dated by the Fire Marshall.
- H. Copy of current Conditional Use Permit and/or Planned Development Permit
- I. Copy of current Business Operations Plan
This plan is to include an explanation of the type of business and vision of what the business will be, a description of the type of entertainment offered, a security plan, a schematic of the business interior, and any other information that is pertinent to the operation of the business.
- J. Copy of Property Deed or valid Lease.
- K. Letter from Property Owner, if leased, stating the owner is in agreement with the business plan for the property.
- L. Fingerprints to process a criminal background check with the state Department of Justice ("DOJ")

In addition, as part of the application review, staff from the Police Department conduct a site inspection of the proposed venue and conduct a traditional background investigation of the individuals involved in the ownership or management of the business. This backgrounding is in addition to obtaining a complete history from the DOJ and includes checking professional references and meeting one-on-one with the above listed individuals.

Based on the above requirements and the costs associated with full cost recovery to process the application, stakeholders understood that cutting costs would be difficult. In addition, the City's current General Fund deficit leaves no option to decrease the cost of the Permit or License because these costs would be absorbed by the Police Department and would affect neighborhood patrol. However City staff believes there is another opportunity to decrease costs and streamline the renewal process for entertainment venues citywide. Therefore:

3. City Manager recommends changing the term of the Public Entertainment Permit from two (2) years, to a two (2) year Permit with a two (2) year review and extension.

By potentially lengthening the term of the Permit, entertainment venues will see a cost savings. The two (2) year review will allow the permit holder and City to review all information to ascertain if it is current. The two (2) year review would be an internal review if the venue was in good standing and did not have any ongoing problems. The review would consist of staff reviewing all information to ensure the business is up-to-date and in compliance with all state and local laws, permits and licenses. If the business had ongoing problems the review would also consist of a meeting with the City and business ownership to address the ongoing problems. The review will be conducted by the Police Department. Staff believes this will be rare since the City and majority of entertainment businesses now work collaboratively to address problems proactively or in real-time. However, there are some businesses who do not work with the City.

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Staff believes, in these cases, it is important to have the ability to require venues to meet with the City and address these issues.

Stakeholders also indicated a desire to have a true renewal process. Currently the Permit does not have a renewal process. Instead Permits and Licenses have a two (2) year term and require the filing of a new application for a Permit or License at the end of that term. Therefore:

4. City Manager recommends a renewal process be created for the Public Entertainment Permit.

City staff has reviewed what would have changed after a two- year period and what would be needed to create an actual renewal process. The renewal process will undoubtedly be shorter and thus, less staff time will be needed to process the permit therefore it will lead to additional cost-savings for the entertainment venues. Staff currently is suggesting entertainment venues in good standing (no administrative citations or suspensions) be allowed to take advantage of the newly created renewal process.

As referenced above, in addition to the Permit, the Entertainment Ordinance requires owners and managers of entertainment venues to be licensed by the City. The current application process for a management license requires the same information and steps as the Permit; therefore the costs are the same. For venues with multiple managers this can be costly. Stakeholders indicated more flexibility with this process would be appreciated and staff agrees that the process to obtain a License should be simpler. Therefore:

5. City Manager recommends the process to obtain a License be amended to simply require information pertinent to the individual and not the business.

By changing the process to only require information pertinent to the individual owner or manager, the process and review time will be reduced. Since this fee is also calculated for full cost-recovery, the price will go down.

EVALUATION AND FOLLOW-UP

The City Attorney will draft an ordinance to amend the Entertainment Ordinance and return to Council within 90 days. At that time City staff will also have proposed fees and charges regarding the new processes for Council consideration. In addition, the City will continue to work with live music stakeholders to explore the potential for less regulation of non-entertainment venues who wish to have occasional entertainment.

POLICY ALTERNATIVES

Not applicable. Modification of the municipal code and implementation of the proposed changes follows Council direction.

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)**

COORDINATION

This memorandum was coordinated with the City Attorney's Office and Police Department.

CEQA

Not a Project, File No.PP10-068 (b), General Procedure & Policy Making.

/s/
PAUL KRUTKO
Chief Development Officer

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