

ORDINANCE NO. 27782

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AN URGENCY ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 6.02 OF TITLE 6 OF THE SAN JOSE MUNICIPAL CODE BY AMENDING SECTION 6.20.130 TO SPECIFY AN ADDITIONAL GROUND FOR DENIAL, SUSPENSION OR REVOCATION OF A LICENSE OR PERMIT AND TO MODIFY TWO OTHER EXISTING GROUNDS; ADDING SECTION 6.02.160 WHICH RESTATES THE EXISTING OPPORTUNITY TO CORRECT REQUIREMENT; ADDING A NEW PART 1.5 TO PROVIDE SUMMARY SUSPENSION PROCEDURES FOR EMERGENCY ACTION TO ABATE IMMINENT THREATS TO THE PUBLIC HEALTH, SAFETY OR WELFARE; AND REPEALING SECTIONS 6.02.240 AND 6.02.250; AND AMENDING CHAPTER 6.60 TO ADD SECTION 6.60.290 PROHIBITING PUBLIC NUISANCES ON OR WITHIN ONE HUNDRED FIFTY FEET OF PUBLIC ENTERTAINMENT BUSINESS PREMISES AND SETTING FORTH THE FACTS CONSTITUTING THE URGENCY

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 grounds provided in this Section 6.02.130 within five (5) years 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 past five (5) years;
- N. The licensee or permittee has conducted the licensed or permitted business in a manner that creates or results in a public nuisance, as defined in Section 1.13.050 of this Code or Sections 3479 and 3480 of the California Civil Code, on or within one hundred fifty (150) feet of the licensed or permitted premises.

SECTION 2. Chapter 6.02 of Title 6 of the San José Municipal Code is amended by adding a new section to be numbered, entitled and to read as follows:

6.02.160 Opportunity to Correct

In all situations where emergency action is not required to abate an imminent threat to the public health, safety or general welfare, prior to issuing a notice of intended decision to suspend or revoke a license or permit pursuant to Section 6.02.200, the department head shall provide the licensee or permittee with written notice and a reasonable opportunity to take voluntary corrective action for any correctable violation of permit or license conditions or other requirements under this Title.

SECTION 3. Chapter 6.02 of Title 6 of the San José Municipal Code is amended by adding a new Part to be numbered, entitled and to read as follows:

Part 1.5

**Emergency Action to Abate Imminent Threats to Public Health, Safety, or Welfare:
Summary Suspension Procedures**

6.02.170 Informal Procedure for Resolution of an Imminent Threat

- A. When the department head determines that there is an imminent threat to the public health, safety or welfare requiring immediate action pursuant to Section 6.02.180, the department head will attempt to informally contact the licensee or permittee by telephone, in-person meeting, or by such other means of communication that the department head deems satisfactory, to discuss with the licensee or permittee the circumstances resulting in the imminent threat to public health, safety or welfare. The department head will further attempt to obtain the licensee's or permittee's commitment to implement immediate voluntary compliance measures that will, in the judgment of the department head, effectively abate the imminent threat to the public health, safety or welfare.
- B. The requirements set out in Subsection A shall not prohibit the department head from issuing a notice of summary suspension pursuant to Section 6.02.180 if:
1. The attempt to contact the licensee or permittee fails; or
 2. The licensee or permittee fails or refuses to immediately implement voluntary compliance measures that the department head deems will effectively abate the imminent threat; or

3. The department head determines that the compliance measures that the licensee or permittee immediately implements are insufficient to effectively abate the imminent threat; or
4. The department head determines that the threat to the public health, safety or welfare is so urgent that compliance with the informal resolution procedures set out in this section will further jeopardize the public health, safety, or welfare.

6.02.180 Summary Suspension

- A. If the department head determines there is an imminent threat to the health, safety or welfare of the public as set out in Subsection B below, a license or permit may be summarily suspended for a period of time not to exceed thirty (30) days.
- 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 a substantial threat of serious bodily injury or death existing on or within 150 feet of the licensed or permitted premises; or
 2. There has been a violation of a permit or license condition or other requirement of this Title that creates an imminent danger to the public health, safety or welfare on or within one hundred fifty (150) feet of the licensed or permitted premises; or
 3. The licensee or permittee has conducted the licensed or permitted business in a manner that creates or results in a public nuisance, as defined in Section 1.13.050 of this Code or Sections 3479 and 3480 of the

California Civil Code, and that public nuisance creates an imminent danger to the public health, safety or welfare on or within one hundred fifty (150) feet of the licensed or permitted premises.

- C. The summary suspension shall take effect immediately upon service of a written notice of suspension by the department head. Notice given to the licensee or permittee shall include the following information:
1. The effective date and time period of the summary suspension;
 2. The grounds and reasons upon which the summary suspension is based;
 3. The licensee or permittee who wishes to challenge the summary suspension may request a hearing before the department head;
 4. The method for requesting a hearing before the department head; and
 5. The notice of summary suspension shall become final unless the department head receives a written request for a hearing from the permittee or licensee within the time period specified in Subsection (E).
- D. The summary suspension shall remain in effect unless and until the department head either:
1. Amends the notice of summary suspension to shorten the time period provided in the earlier notice of summary suspension; or
 2. Issues a decision after holding a hearing pursuant to the requirements of this section that modifies or overrules the summary suspension.

- E. If the licensee or permittee wishes to challenge the summary suspension, the licensee or permittee must file a written request for a hearing before the department head within three (3) business days after service of the notice of summary suspension. If the department head does not receive a request for a hearing from the licensee or permittee within this time period, the notice of summary suspension shall become final.

- 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) business days of the licensee's or permittee's request for a hearing, unless the licensee or permittee requests an extension of the time within which the department head can hold the hearing.

- G. The department head shall serve a written notice of hearing on the licensee or permittee not later than two (2) business days after receiving the licensee's or permittee's written request for a hearing. The notice of hearing shall contain the date, time and place at which the hearing shall be conducted.

- H. 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.

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

- J. 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 K. If the department head affirms or modifies 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 intended to protect the health, safety or welfare of the public or prevent the conduct or condition that led to the summary suspension.

- K. The department head shall issue an oral decision upon the close of the hearing or may communicate the decision by telephone, within twenty-four (24) hours of the close of the hearing. The department head shall also serve the licensee or permittee with a written decision within three (3) business days of the close of the hearing.

- L. Following the service of a written decision after the hearing, a licensee or permittee who is dissatisfied with the department head's decision shall have a choice of either filing an appeal with the Appeals Hearing Board under the terms set out in Section 6.02.230 or accepting the decision as final and seeking judicial review pursuant to Section 1094.6 of the Code of Civil Procedure of the State of California. If the permittee or licensee is dissatisfied with the decision by the department head and chooses to have an appeal hearing with the Appeals Hearing Board, then the decision by the Appeals Hearing Board shall be final for purposes of judicial review pursuant to Section 1094.6 of the Code of Civil Procedure of the State of California.

6.02.190 Method of Service

- A. All written notices and decisions required by this Part 1.5 of Chapter 6.02 shall be served as provided in Section 1.04.140 of this Code. Alternatively, any written notice required by this Part 1.5 of Chapter 6.02 may be served by conspicuously posting a copy of the written notice at the licensed or permitted premises.

- B. The failure of any licensee or permittee to receive any notice required under this Part shall not affect the validity of any proceedings taken under this Part.

SECTION 4. Section 6.02.240 of Chapter 6.02 of Title 6 of the San José Municipal Code is hereby repealed.

SECTION 5. Section 6.02.250 of Chapter 6.02 of Title 6 of the San José Municipal Code is hereby repealed.

SECTION 6. Chapter 6.60 of Title 6 of the San José Municipal Code is amended by adding a new section to be numbered, entitled and to read as follows:

6.60.290 Public Nuisance Prohibited

The licensee or permittee shall not conduct the permitted business in a manner that creates or results in a public nuisance, as defined in Section 1.13.050 of this Code or Sections 3479 and 3480 of the California Civil Code, on or within one hundred fifty (150) feet of the licensed or permitted premises.

SECTION 7. 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 for more strict regulation of the operation of public entertainment venues and how those venues impact the public health, safety and welfare; (B) there is and continues to be an immediate need for the City to protect those who live in, work in, and visit public entertainment venues, the areas in which those venues are located, and the neighborhoods adjacent to those areas, particularly the City's Downtown and the neighborhoods adjacent thereto; and (C) there is and continues to exist 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 8. 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 until the effective date of the superseding Ordinance.

ADOPTED this 13th day of June, 2006, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, LeZOTTE,
NGUYEN, PYLE, REED, WILLIAMS, YEAGER;
GONZALES

Deleted: ¶

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

RON GONZALES
Mayor

ATTEST:
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LEE PRICE, MMC
City Clerk