

File No. 100674

Committee Item No. 5

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Public Safety

Date: July 19, 2010

Board of Supervisors Meeting

Date _____

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Completed by: Victor Young

Date July 15, 2010

Completed by: Victor Young

Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Expanding the Entertainment Commission's Power to Revoke Permits.]

2
3 Ordinance amending Sections 1060.20.4 and 1070.20 of the San Francisco Police Code
4 to expand the grounds for revocation of place of entertainment permits, extended-
5 hours premises permits, and one-time event permits to include: (1) public safety
6 considerations, where operation of the permit poses a substantial risk of physical harm
7 or injury to individuals, and (2) where the permittee's persistent action or inaction
8 causes serious and continuing problems that amount to a public nuisance.

9 NOTE: Additions are single-underline italics Times New Roman;
10 deletions are ~~strike-through italics Times New Roman~~.
11 Board amendment additions are double-underlined;
12 Board amendment deletions are ~~strikethrough-normal~~.

13 Be it ordained by the People of the City and County of San Francisco:

14 Section 1. The San Francisco Police Code is hereby amended by amending Section
15 1060.20.4, to read as follows:

16 **SEC. 1060.20.4. REVOCATION OF A PERMIT.**

17 (a) GROUNDS FOR REVOCATION. The Entertainment Commission may revoke any
18 Place of Entertainment or One Time Event Permit issued under this Article if it determines
19 after a public hearing that any of the following conditions exist:

20 (1) The Permittee has knowingly made any false, misleading, or fraudulent statement
21 of material fact or has knowingly omitted a material fact in the application for a permit;~~or~~

22 (2) The Permittee has failed to pay any fee or charge required under this Article;~~or~~

23 (3) The Permittee has failed to surrender the permit as required by Section 1060.24(b).

24 (4) One or more of the grounds for suspension enumerated in Section 1060.20.1(a) applies, and
25 considerations of public safety warrant revocation of the permit. For purposes of this provision,

1 "considerations of public safety" means a substantial risk of physical harm or injury to individuals. In
2 determining whether considerations of public safety warrant revocation, the Commission shall evaluate
3 the likelihood and seriousness of the threat to public safety that continued operation of the Business
4 under the permit presents. In making its determination, the Commission shall consider the following
5 factors: (i) the history of violence and other public safety problems associated with the operation of the
6 Business; (ii) a pattern of the Permittee's noncompliance with Security Plan requirements imposed by
7 law or as a condition of the permit; (iii) the frequency of the Permittee's violations of other provisions
8 of law or permit conditions, which violations have contributed to violence or other public safety
9 problems associated with the operation of the Business; (iv) the degree to which the Permittee's action
10 or inaction has been responsible for violence and other public safety problems associated with the
11 operation of the Business; and (v) the degree to which the City, through the Entertainment Commission,
12 Director, Police Department, or otherwise, has notified the Permittee of violence or other public safety
13 problems associated with the operation of the Business and/or of the need to take action to reduce such
14 problems, and the promptness and efficacy of the Permittee's responses.

15 (5) One or more of the grounds for suspension enumerated in Section 1060.20.1(a) applies, and
16 revocation is warranted because the problems that those grounds have created have been serious and
17 continuing, and the action or inaction of the Permittee contributing to those problems has been
18 persistent; provided, that the circumstances warranting revocation under this provision would
19 constitute a public nuisance within the meaning of Section 3840 of the California Civil Code.

20 (b) HEARING BY COMMISSION. The Entertainment Commission shall give the
21 Permittee and the Manager written notice of a hearing to determine whether to revoke a
22 permit. The notice shall set forth the grounds for the proposed revocation and the date, time
23 and location of the hearing.

24 (c) APPLICATION FOR PERMIT AFTER REVOCATION. The revocation of a permit
25 under this Article shall not preclude the Permittee from applying for a new permit under this

1 Article, except that, notwithstanding any other provision of law, including but not limited to Section
2 1060.5(f), revocation under Section 1060.20.4(a)(4) or Section 1060.20.4(a)(5) shall render the
3 Permittee ineligible to apply for a new permit under this Article for one year from the date of
4 revocation.

5 (d) When considering whether to revoke a permit under this Article, the Commission
6 and the Director shall consider any previous denial of a permit application or previous
7 suspension or revocation of a permit, under this Article or Article 15.2, for the same permit
8 applicant or Permittee when the circumstances warranting the previous action are relevant to
9 the current determination.

10
11 Section 2. The San Francisco Police Code is hereby amended by amending Section
12 1070.20, to read as follows:

13 **SEC. 1070.20. REVOCATION OF A PERMIT.**

14 (a) GROUND FOR REVOCATION. The Entertainment Commission may revoke any
15 permit issued under this Article if it determines after a public hearing that any of the following
16 conditions exist:

17 (1) The Permittee has knowingly made any false, misleading, or fraudulent statement
18 of material fact or has knowingly omitted a material fact in the application for a permit; ~~or~~

19 (2) The Permittee has failed to pay any fee or charge required under this Article; ~~or~~

20 (3) The Permittee has failed to surrender the permit as required by Section 1070.22(b).

21 (4) One or more of the grounds for suspension enumerated in Section 1070.17.1(a) applies, and
22 considerations of public safety warrant revocation of the permit. For purposes of this provision,
23 "considerations of public safety" means a substantial risk of physical harm or injury to individuals. In
24 determining whether considerations of public safety warrant revocation, the Commission shall evaluate
25 the likelihood and seriousness of the threat to public safety that continued operation of the Business

1 under the permit presents. In making its determination, the Commission shall consider the following
2 factors: (i) the history of violence and other public safety problems associated with the operation of the
3 Business; (ii) a pattern of the Permittee's noncompliance with Security Plan requirements imposed by
4 law or as a condition of the permit; (iii) the frequency of the Permittee's violations of other provisions
5 of law or permit conditions, which violations have contributed to violence or other public safety
6 problems associated with the operation of the Business; (iv) the degree to which the Permittee's action
7 or inaction has been responsible for violence and other public safety problems associated with the
8 operation of the Business; and (v) the degree to which the City, through the Entertainment Commission,
9 Director, Police Department, or otherwise, has notified the Permittee of violence or other public safety
10 problems associated with the operation of the Business and/or of the need to take action to reduce such
11 problems, and the promptness and efficacy of the Permittee's responses.

12 (5) One or more of the grounds for suspension enumerated in Section 1070.17.1(a) applies, and
13 revocation is warranted because the problems that those grounds have created have been serious and
14 continuing, and the action or inaction of the Permittee contributing to those problems has been
15 persistent; provided, that the circumstances warranting revocation under this provision would
16 constitute a public nuisance within the meaning of Section 3840 of the California Civil Code.

17 (b) HEARING BY COMMISSION. The Entertainment Commission shall give the
18 Permittee and the Manager written notice of a hearing to determine whether to revoke a
19 permit. The notice shall set forth the grounds for the proposed revocation and the date, time
20 and location of the hearing.

21 (c) APPLICATION FOR PERMIT AFTER REVOCATION. The revocation of a permit
22 under this Article shall not preclude the Permittee from applying for a new permit under this
23 Article, except that, notwithstanding any other provision of law, including but not limited to Section
24 1060.5(f), revocation under Section 1070.20(a)(4) or Section 1070.20.(a)(5) shall render the Permittee
25 ineligible to apply for a new permit under this Article for one year from the date of revocation.

1 (d) When considering whether to revoke a permit under this Article, the Commission
2 and the Director shall consider any previous denial of a permit application or previous
3 suspension or revocation of a permit, under this Article or Article 15.1, for the same permit
4 applicant or Permittee when the circumstances warranting the previous action are relevant to
5 the current determination.
6

7 Section 3. Severability. In the event that a court of competent jurisdiction holds that
8 federal or state law, rule, or regulation invalidates any clause, sentence, paragraph, or section
9 of this Ordinance or the application thereof to any person or circumstances, it is the intent of
10 the Board of Supervisors that the court sever such clause, sentence, paragraph, or section so
11 that the remainder of this Ordinance shall remain in effect.
12

13 APPROVED AS TO FORM:
14 DENNIS J. HERRERA, City Attorney

15 By:


16 PAUL ZAREFSKY
17 Deputy City Attorney
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LEGISLATIVE DIGEST

[Expanding the Entertainment Commission's power to revoke permits.]

Ordinance amending Sections 1060.20.4 and 1070.20 of the San Francisco Police Code to expand the grounds for revocation of Place of Entertainment permits, Extended-Hours Premises permits, and One Time Event permits to include (1) public safety considerations, where operation of the permit poses a substantial risk of physical harm or injury to individuals, and (2) where the permittee's persistent action or inaction causes serious and continuing problems that amount to a public nuisance.

Existing Law

The Entertainment Commission's power to revoke entertainment-related permits is narrow. Revocation is available only in three circumstances: The permittee (1) knowingly made false, misleading, or fraudulent statements or knowingly omitted a material fact in applying for a permit; (2) failed to pay a required fee or charge; or (3) failed to surrender the permit upon a change of ownership. If a permittee is responsible for serious public safety problems or other serious problems affecting the community, the Commission's only recourse is to suspend the permit – and a first suspension may be for no more than 30 days, a second suspension no more than 60 days, and a third suspension no more than 90 days.

Amendments to Current Law

The proposed ordinance would add two grounds for permit revocation: (1) considerations of public safety, where operation of the permit poses a substantial risk of harm or injury to individuals; and (2) where the permittee's persistent action or inaction causes serious and continuing problems that amount to a public nuisance.

In revoking a permit on the basis of public safety considerations, the Commission would have to first determine that one or more of the existing grounds to suspend the permit are present. The Commission would then determine whether revocation is warranted based on consideration of five factors:

- The history of violence and other public safety problems associated with the permittee's business;
- A pattern of the permittee's noncompliance with security plan requirements;
- The frequency of the permittee's violations of other provisions of law or permit conditions, which have contributed to violence or other public safety problems associated with the permittee's business;

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- The degree to which the permittee has been responsible for violence and other public safety problems associated with the permittee's business; and
- The degree to which City officials have notified the permittee of violence or other public safety problems associated with the permittee's business or of the need to act to reduce such problems, and the promptness and efficacy of the permittee's responses.

The Commission would also be authorized to revoke a permit where one or more of the grounds for suspension is present, and

- The problems thereby created are serious and continuing;
- The action or inaction of the permittee contributing to those problems has been persistent; and
- The circumstances warranting revocation constitute a public nuisance as defined by law.

For either type of permit revocation, the permittee would be ineligible to reapply for the permit, or any permit under the same Article of the Police Code, for a year.

Background Information

The continued operation of a business that has received a permit under Articles 15.1 and/or 15.2 of the Police Code can pose a serious threat to public safety or a serious public nuisance, warranting revocation of the permit. But currently the Police Code does not authorize the Entertainment Commission to revoke a permit on those bases, no matter how compelling the circumstances. The proposed ordinance would correct this gap in the law, to enable the Commission in compelling cases to revoke a permit.

