FILE NO. 240696

REVISED LEGISLATIVE DIGEST

(Amended in Committee – July 1, 2024)

[Police Code - Tenderloin Retail Hours Restriction Pilot Program]

Ordinance amending the Police Code to create a two-year pilot program, during which retail food and tobacco establishments in a high-crime area of the Tenderloin police district are prohibited from being open to the public from 12:00 a.m. to 5:00 a.m., or from 2:00 a.m. to 5:00 a.m. if subject to regulation by the California Department of Alcoholic Beverage Control; authorizing the Department of Public Health to impose administrative fines for violation of the hours restrictions; declaring an establishment's operation in violation of the hours restrictions to be a public nuisance; authorizing enforcement actions by the City Attorney; and creating a private right of action for persons harmed by a violation of the hours restriction.

Amendments to Current Law

This ordinance would establish a two-year pilot program during which food markets and tobacco establishments ("Retail Establishments") in a section of the Tenderloin bounded to the north by O'Farrell Street, to the south by McAllister Street, to the east by Jones Street, and to the west by Polk Street (the "Tenderloin Public Safety Area") would be prohibited from being open to the public between 12:00 a.m. and 5:00 a.m. If a Retail Establishment had a license to sell from the California Department of Alcoholic Beverage Control ("ABC"), then the prohibition would apply from 2:00 a.m. to 5:00 a.m.

The Department of Public Health would be responsible for administrative enforcement of the prohibition, with support from the Police Department. A violator could be liable for administrative fines of up to $1,000 per violation, together with enforcement costs, with a single violation defined on a per-hour basis, though a violator could face multiple citations in a single 12:00 a.m. to 5:00 a.m. period (or in a single 2:00 a.m. to 5:00 a.m. period, in the case of an ABC licensee) only if they received written warning following the first violation and again operated in violation of the hours restriction. A violator could also be liable for civil penalties pursued by the City Attorney in a civil action, and attorneys' fees and costs. The ordinance also declares a business's operation in violation of the ordinance to be a public nuisance. the ordinance creates a private right of action for a person able to prove in a civil action that they were harmed by an establishment's operation in violation of the hours restriction, so long as the person provides 60 days' notice to the City Attorney prior to commencing an action against a retail establishment, and provided there is not a pending lawsuit brought by the City Attorney against the same retail establishment at the time the person commences an action.

Background Information

The Police Department has documented through crime data, photographs, and patrol officers' observations that large groups of people engaged in illicit drug sales and use congregate close to open food markets and tobacco establishments in the late night and early morning hours in the Tenderloin Public Safety Area. These late-night gatherings contribute to various types of criminal activity, impede law enforcement operations, leave behind significant debris and unsanitary waste, and lead residents of the area to feel unsafe and reluctant to venture outside during nighttime hours.

The Police Department believes that restricting food markets and tobacco establishments in the Tenderloin Public Safety Area from being open to the public between the hours of 12:00 a.m. and 5:00 a.m. will help limit the congregation of large groups engaged in drug activity, and thereby facilitate effective law enforcement in the area, reduce the accumulation of unsafe and unsanitary debris, and reduce residents' fear and insecurity related to these nighttime conditions.

This version of the digests reflects amendments in Committee, to provide that Retail Establishments that have ABC licenses are prohibited from being open to the public only between 2:00 a.m. and 5:00 a.m., and to require that a progress report be submitted to the Board of Supervisors six months following the start of the pilot program.

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