



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: July 15, 2011 REPORT NO: 11-112

ATTENTION: The Committee of Budget and Finance
Agenda of July 20, 2011

SUBJECT: Police Department Entertainment Permit Exemptions Proposal

REFERENCE:

1. June 28, 2011 City Council meeting
2. June 6, 2011 City Council Meeting
3. May 4, 2011 Budget Committee Meeting
4. February 25, 2009 Budget and Finance Committee Meeting
5. City General Fund User Fee Policy
6. IBA General Fund User Fee Policy

REQUESTED ACTION:

Adopt the amendments to the San Diego Municipal Code (Code) reflecting the adding a new exemption to the list of exemptions for an entertainment permit in Chapter 3, Article 3, Division 15.

STAFF RECOMMENDATION:

Approve the amendments adding the proposed exemption to the list of exemptions for an entertainment permit.

SUMMARY:

The San Diego Police Department [Department] is responsible for issuing permits and regulating a variety of businesses and occupations. These are collectively referred to as *Police Regulated Businesses*. The purpose of having these Police Regulated Businesses is to allow the Department the ability to conduct thorough background checks to ensure compliance with the standards set forth in the Code. It also allows the Department to inspect and regulate these businesses and occupations to ensure there is no criminal activity or violations of the rules governing those businesses and occupations.

In an effort to implement the Mayor's comprehensive fee policy and comply with Chapter Three of the San Diego Municipal Code, the Department recently reviewed its entertainment fees and proposed updates to the rates. During this process the Department met with representatives from the Mayor's office, Council offices, the City Attorney's Office, the IBA, restaurant and entertainment business stakeholders to discuss their concerns about creating a new tier for

“limited” entertainment venues. The Department worked on a proposal that would meet the stakeholder’s requests without compromising the safety and quality of life for the surrounding community members.

This proposal would add an exemption to the list of sixteen exemptions that already exist for an Entertainment Permit in San Diego Municipal Code section 33.1504.

Entertainment Permits

There are approximately 243 Entertainment permits currently in the city of San Diego. In addition to these permits there are several establishments that qualify for one of the 16 exemptions already listed in SDMC 33.1504. These exemptions are for a variety of entertainment and events including; City, County, or State sponsored events; non-profit sponsored activities for youths; entertainment sponsored by City authorized business improvement districts; or wedding or reception type functions when there is no admission charge; although there may be other applicable City regulations that must be complied with beyond entertainment permits. All of these options are available to assist businesses, the general public and the Department in providing safe entertainment for all ages. See Attachment 1 for a full copy of the exemptions listed in SDMC section 33.1504 and the associated definitions.

This proposal would add a 17th exemption that would read as follows:

(q) Any establishment that is a *bona fide restaurant* provided all of the following conditions exist:

- (1) No admission charge
- (2) No required purchase or donation (such as minimum drink order)
- (3) Establishment is closed and all patrons have vacated the premises between 11:00 pm and 8:00 am.
- (4) No customer dancing
- (5) No *occupied residential property* within 100 feet of establishment premises.

The establishments that qualify for this exemption would not be pro-actively regulated or inspected. The Department would respond to complaints or other calls for service as with any business. If an investigation showed that the establishment did not meet the requirement for a claimed exemption, the Department would take appropriate enforcement action, including citing the business for providing entertainment without a permit.

Cost Recovery Discussion

This exemption would not require an application process or any need for police regulation, therefore there would be no fees involved. Because of the suggested requirements it is not anticipated that many establishments currently permitted would qualify for the exemption and thus no longer pay fees. This number is estimated to be between 5 and 10.

FISCAL CONSIDERATIONS:

Since these police regulated businesses are based on a cost recovery model there would be no negative effect on the Departments ability to recover all of the money it takes to regulate the permitted businesses. There will be no cost for implementation other than expenses associated with public notice or mailings.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The Entertainment fee structure changes recently went through the Budget and Finance Committee, PS&NS and Full Council. The new entertainment tiers and fee increases were adopted on June 28th, 2011 by a 6-2 vote.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Notices of the changes to the SDMC 33.1504 will be posted at all San Diego Police Department facilities. The proposed changes will also be posted on the City's web site. The Department has met with representatives of business interest groups and will continue to provide updated information to business interest groups as needed.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Stakeholders include restaurant and business owners and community groups from around the city.

Respectfully submitted,



William M. Lansdowne
Chief of Police

ATTACHMENT

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 3,
DIVISION 15 OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTIONS 33.1502 AND 33.1504, ALL
RELATING TO ENTERTAINMENT ESTABLISHMENTS.

WHEREAS, the San Diego Police Department (Department) is responsible for issuing permits and regulating industries involving a variety of businesses; and

WHEREAS, these are collectively referred to as Police Regulated Businesses; and

WHEREAS, the Department inspects and regulates these businesses to ensure there is no criminal activity or other violations that would have a negative impact on the quality of life of the surrounding community; and

WHEREAS, the Department is mandated by the San Diego Municipal Code to be cost recoverable in its regulation of these businesses; and

WHEREAS, in an effort to implement the City's comprehensive fee policy, the Department recently reviewed its entertainment fees and proposed updates to the rates; and

WHEREAS, during this process the Department was directed to meet with representatives from the Mayor's office, Council offices, the City Attorney's Office, the Independent Budget Analyst, and restaurant and entertainment business stakeholders to discuss creating a new tier for "limited" or "exempt" entertainment venues that would fall outside the necessity for police regulation; and

WHEREAS, those meetings resulted in a proposal to add an additional exemption from police regulation to the exemptions that currently exist for an Entertainment Permit that already exist in the San Diego Municipal Code under section 33.1504; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 3, Article 3, Division 15 of the San Diego Municipal Code is hereby amended by amending sections 33.1502 and 33.1504 to read as follows:

§ 33.1502 Definitions

For purposes of this Division:

“*ABC License*” means the license issued by the California Department of Alcoholic Beverage Control.

“*Admission Charge*” means any charge for the right or privilege to enter any place of *entertainment* including a minimum service charge, an event charge, a cover charge, a charge for the use of seats and tables, or any other similar charge. It also includes the purchase or presentation of a ticket or token directly or indirectly required as a condition for entrance. It does not include tips, gratuities, voluntary donations, or suggested donations for employees or for any person providing *entertainment*.

“*Bona fide restaurant*” means an eating establishment where a minimum percentage of its food sales are 50% of gross receipts.

“*Conditional use permit*” means any permit issued by the City of San Diego pursuant to Chapter X, Article 1, Division 5, or pursuant to a planned district ordinance, upon which the *Chief of Police* has had a meaningful role in

determining conditions on the *permit* related to the operation of a *public dance, entertainment, or amusement premises*.

“*Dance and dancing*” means movement of the human body, accompanied by music or rhythm.

“*Entertainment*” or “*Entertainment Establishment*” means any single event, a series of events, or an ongoing activity or business, occurring alone or as part of another business, to which the public is invited or allowed to watch, listen, or participate, or is conducted for the purposes of holding the attention of, gaining the attention of, or diverting or amusing guests or patrons, including:

- (a) Presentations by single or multiple performers, such as hypnotists, pantomimes, comedians, musical song or dance acts, plays, concerts, any type of contest; sporting events, exhibitions, carnival, rodeo or circus acts, demonstrations of talent; shows, reviews, any other such activity which may be attended by members of the public.
- (b) *Dancing* to live or recorded music.
- (c) The presentation of recorded music played on equipment which is operated by an agent or contractor of the establishment, commonly known as “DJ” or “disc jockey.”

“*Property Line*” means the defined perimeter of a parcel of land, and separates one parcel of land from any other parcel of land, or from a public right of way.

“*Residential property*” means a parcel of land that is zoned for residential use.

“*Theater*” means any commercial establishment where regular theatrical performances, such as performances of literary compositions that tell a story, are

given, usually on a stage, and usually with ascending row seating or some arrangement of permanent seating.

§ 33.1503 Entertainment Permit Required

[No change in Text]

§ 33.1504 Exemption from the Permit Requirement

The following types of entertainment and events are exempt from the police permit required by this Division. This exemption does not relieve any of the establishments from complying with all other applicable laws, including the laws related to noise levels, particularly those contained in Chapter V of this Code.

(a) through (p) [No change in text]

- (q) Any establishment that is a *bona fide restaurant* provided all of the following conditions exist:
- (1) No admission charge
 - (2) No required purchase or donation (such as minimum drink order)
 - (3) Establishment is closed and all patrons have vacated the premises between 11:00 pm and 8:00 am.
 - (4) No customer dancing
 - (5) No *residential property* within 100 feet of the establishment. The 100 feet distance is measured in a straight line, in all directions from the establishment to the *property line* of the *residential property*.

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By _____
John C. Hemmerling
Deputy City Attorney

JCH:jdf
7/7/2011
Or.Dept:Police

DRAFT

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

DRAFT