



## *CITY OF EMERYVILLE*

### MEMORANDUM

**DATE:** November 3, 2015

**TO:** Mayor and City Council

**FROM:** Michael A. Guina, City Attorney

**SUBJECT:** **An Urgency Interim Ordinance Of The City Council Of The City Of Emeryville Establishing A Moratorium On The Approval Or Issuance Of An Annual Cabaret Or Dance Hall License**

#### **RECOMMENDATION**

Staff recommends the City Council consider this staff report and attached ordinance adopting as an urgency measure an interim ordinance establishing a moratorium on the approval or issuance of an annual cabaret or dance hall license, and provide direction to staff. If the City Council wishes to adopt the interim ordinance as an urgency measure, the Council must make certain findings and adopt the ordinance by a four-fifths vote. The measure will go into effect immediately, subject to the time limitations discussed below.

#### **BACKGROUND**

Trader Vic's restaurant is located adjacent to the Watergate Condominiums. Trader Vic's operations include live music for its patrons. Over the years residents at Watergate have complained about operations at Trader Vic's, include noise (from music, guests, and deliveries), and parking impacts to the neighborhood.

In 2004, representatives from the City, Trader Vic's, and Watergate residents met to discuss the residents' complaints. Trader Vic's and the residents agreed to a compromise, which was memorialized in a letter from the City Manager dated October 28, 2004 ([Exhibit A](#)). While complaints decreased following the 2004 letter, recently Watergate residents have reported new concerns regarding noise and parking.

Councilmember Davis asked staff to prepare an urgency interim ordinance which would establish a temporary moratorium on the approval or issuance of an annual cabaret or dance hall permit while the City considers possible amendments to the cabaret ordinance. The proposed urgency interim ordinance is attached to this report.

#### **DISCUSSION**

Cabaret and Dance Hall Ordinance (EMC 5-4.01 et seq.) Chapter 4 of Title 5 of the Emeryville Municipal Code (the “Cabaret Ordinance”), “Cabarets and Dances,” regulates the permitting of cabarets. No cabaret or dance hall shall be established, maintained, managed or operated unless a valid cabaret or dance license (“license”) has been issued as provided by the Cabaret Ordinance (EMC Section 5-4.03). Among other requirements, an application for a license shall include a conditional use permit issued by the Planning Commission which addresses issues including noise, operational characteristics, security, lighting, and parking<sup>1</sup>. A license shall not be issued if the applicant fails to meet the requirements of the Cabaret Ordinance, including failure to obtain a conditional use permit from the Planning Commission<sup>2</sup>. In considering whether to issue a conditional use permit to a license applicant, the Planning Commission must consider the zoning for the proposed cabaret or dance hall and whether the proposed cabaret or dance hall is conditionally permitted within that zone.

A cabaret or dance hall license is issued by the City Council after an application has been reviewed by the Police Chief and a recommendation issued by the Police Chief and the City Manager<sup>3</sup>. A cabaret or dance hall license automatically expires on December 31 of each year, and the licensee must re-apply for a new license each year. Licenses may be suspended or revoked for failure to comply with the Cabaret Ordinance; for any breach of the conditions under which the license was issued; if the cabaret or dance hall is conducted in such a manner as to constitute a nuisance or disturb the peace or be deleterious to the public peace, health, safety or welfare; if the conditional use permit approved for the cabaret or dance hall has been suspended or revoked; or the licensee fails to pay any taxes or fees imposed by the City<sup>4</sup>.

The Cabaret Ordinance was adopted in 1999 and has never been amended. The City Council may wish to consider amendments to the Cabaret Ordinance. In addition, the City Council may consider amendments to the Planning Regulations to the zones where cabarets and dance halls are permitted.

As discussed below, Government Code Section 65858 allows the City to adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City is considering or studying. The City Council may find the proposed interim ordinance is necessary to avoid issuing a license while the City is considering amendments to either the Cabaret Ordinance, the Planning Regulations, or both. If the City Council directs amendments to the Cabaret Ordinance and/or the Planning Regulations, then an interim urgency ordinance would be necessary to provide City staff, the Planning Commission, and the City Council sufficient time to present a comprehensive proposal for those

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<sup>1</sup> EMC Section 5-4.04(b)

<sup>2</sup> EMC Section 5-4.07(b)

<sup>3</sup> EMC Section 5-4.05, 5-4.06

<sup>4</sup> EMC Section 5-4.08

amendments. In this scenario, a temporary moratorium on any issuance of a new annual license would be desirable and necessary to protect the public health, welfare, and safety by ensuring that no licenses would be issued which would be in conflict with the possible amendments to the Cabaret Ordinance and/or the Planning Regulations.

### Proposed Interim Ordinance

The interim ordinance prohibits the approval or issuance of an annual cabaret or dance hall license. The interim ordinance does not prohibit the issuance of a single cabaret or dance license; single licenses may still be issued once a quarter per applicant and are issued administratively by the Police Chief without City Council approval.

## **LEGAL CONSIDERATIONS**

### Statutory Framework for Adoption of Urgency Ordinances and Urgency Interim Ordinances

#### *Urgency Ordinances*

Most ordinances may only be adopted at a regular meeting of the legislative body and only after two readings.<sup>5</sup> Adoption usually requires a majority vote of the total membership of the legislative body.<sup>6</sup> An ordinance normally takes effect 30 days after final passage.<sup>7</sup>

However the City Council may adopt an urgency ordinance which takes effect immediately under specific circumstances. A city may adopt an urgency ordinance for the immediate preservation of the public peace, health or safety. The ordinance must contain a declaration of facts constituting the urgency, and the ordinance must be passed by a four-fifths vote of the City Council.<sup>8</sup> An urgency ordinance does not require two readings, but instead may be passed immediately upon introduction at either a regular or special meeting.<sup>9</sup>

#### *Urgency Interim Ordinances and Required Findings*

The Government Code allows a legislative body to adopt as an urgency measure an interim ordinance “prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time.”<sup>10</sup> The urgency interim ordinance requires a four-fifths vote of

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<sup>5</sup> Government Code (GC) section 36934

<sup>6</sup> GC 36936

<sup>7</sup> GC 36937

<sup>8</sup> Id.

<sup>9</sup> GC 36934

<sup>10</sup> GC 65858(a)

the legislative body for adoption and is effective for 45 days from the date of adoption.<sup>11</sup> The interim ordinance may be extended twice: initially for an additional 10 months and 15 days; and subsequently for one year. Any extension requires a four-fifths vote for adoption and no more than two extensions may be adopted.<sup>12</sup>

The Government Code provides that a legislative body shall not adopt or extend any interim ordinance unless the ordinances contain findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional land use entitlements would result in that threat to public health, safety, or welfare.<sup>13</sup> Those findings are discussed below.

Ten days prior to the expiration of the interim ordinance or any extension, the legislative body shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance.<sup>14</sup>

#### *Findings for Adoption of Interim Ordinance*

As a prerequisite for adopting or extending an interim ordinance, the Government Code requires the City Council to make findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional land use entitlements would result in that threat to public health, safety, or welfare. The following findings are proposed in support of the interim ordinance:

1. As provided in EMC Section 5-4.01, the City Council finds that the public health, safety and welfare require the establishment of regulations for the operation of ongoing cabarets and dance halls, as well as for one-time cabaret and public dancing events. The City Council finds it necessary to regulate:
  - (a) The persons who will own and/or operate cabarets and dance halls, as well as conduct occasional cabaret or public dance events;
  - (b) The location and operation of cabarets and public dances in the City, including noise, hours of operation and patron security and safety; and
  - (c) The issuance of permits and licenses, including limitations on transfer and assignment, regarding cabarets and public dances.
2. The City Council finds that it wishes to consider amendments to the Cabaret Ordinance to review appropriate requirements for issuance of a license. Furthermore the City Council wishes to consider amendments to the Planning Regulations to review zoning requirements for cabaret and dance hall licenses;

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<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> GC 65858(c)

<sup>14</sup> GC 65858(d)

3. The City Council finds that issuance of an annual cabaret or dance hall license under the current Cabaret Ordinance constitutes a current and immediate threat to the public health, safety, and welfare while the City Council contemplates amendments to the Cabaret Ordinance and/or the Planning Regulations, in that issuance of a license under the current regulations may conflict with changed requirements which will be studied.
4. The City Council finds that a temporary moratorium prohibiting the issuance of an annual cabaret or dance hall license is necessary in order to allow the City sufficient time to study, develop, consider, and adopt a comprehensive proposal for amendments to the Cabaret Ordinance and / or Planning Regulations relating to licenses.

## CONCLUSION

In order to adopt the interim ordinance, the City Council must make the finding that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of licenses under the current regulations would result in a threat to the public health, safety, or welfare, as described in this staff report and contained in the ordinance. The interim ordinance will be valid for 45 days from adoption, after which it will expire unless extended as described above.

In addition the City Council is asked to provide direction on the following issues:

- Whether the City Council wishes to study amendments to the Cabaret Ordinance.
- Whether the City Council wishes to study amendments to the Planning Regulations as to zoning requirements for licenses.
- Whether the City Council wishes to include additional or different findings in support of the interim ordinance

APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:



Michael Guina, City Attorney

Attachments:

1. October 28, 2004 Letter
2. Proposed Urgency Interim Ordinance