

Meeting Date: February 18, 2014

Report Type: Staff

**Law and Legislation
Committee Report**

915 I Street, 1st Floor

www.CityofSacramento.org

Title: Ordinance Relating to Entertainment Establishments

Location: Citywide

Issue: Staff is recommending revisions to the Entertainment Establishments Code to better address current entertainment industry trends and operations.

Recommendation: Pass a motion to approve and forward to City Council amendments to City Code Chapter 5.108 relating to Entertainment Establishments.

Contact: Tina Lee-Vogt, Program Manager, 916-808-2679; Ron O'Connor, Operations Manager, 916-808-8183, Community Development Department.

Presenter: Tina Lee-Vogt, Program Manager, 916-808-2679, Community Development Department.

Department: Community Development Department

Division: Business Code Compliance

Dept ID: 21001313

Attachments:


- 01 Description/Analysis**
- 02 Background**
- 03 Ordinance Revisions – Redline**
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Submitted By: Tina Lee-Vogt, Program Manager

Adobe Signature: **Tina Lee-Vogt**

Approved By: Max Fernandez, Director

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Attachment 01 – Description/Analysis

Issue: In 2003, the Council adopted Chapter 5.108 of the Sacramento City Code to regulate the operation of entertainment establishments for the public health, safety, and welfare. The intent of this chapter is to provide options to the City Manager in regulating the variety of businesses and events that provide entertainment. Staff is recommending revisions to the Entertainment Establishments Code to better address current entertainment industry trends and operations.

Policy Considerations: The primary goal of this update is to modify the ordinance to be more consistent with current entertainment industry trends and practices. Significant elements of these revisions clarify permit exemptions and the duration of permits.

Economic Impacts: The purpose of this program is to regulate entertainment establishments for the public health, safety, and welfare, and to encourage the development of entertainment venues that provide rich and diverse artistic and cultural experiences for residents and visitors.

Environmental Considerations: This project is exempt from CEQA because it does not have the potential for causing a significant effect on the environment. (CEQA Guidelines §15061(b)(3).)

Sustainability: There are no sustainability considerations applicable to amending City Code relating to the proposed amendments to the entertainment establishments ordinance.

Commission/Committee Action: None.

Rationale for Recommendation: There have been a number of industry and operational changes related to the Entertainment Permit Program since the Code was originally adopted in 2003. The proposed amendments are intended to address those changes and promote greater compliance with the Program.

Financial Considerations: The entertainment permit program costs are offset through the collection of program fees. Currently, 50% of costs are recovered from program permit fees. Staff will present a report to the City Council to amend the program fee schedule consistent with the amended ordinance to add Inspections and Modifications fees. However, the Program fees (New, Renewal, and Special application) will remain the same.

Emerging Small Business Development (ESBD): No goods or services are being purchased under this report.

Attachment 02 – Background

Entertainment Permit Program

Program Information

In 2003, the City Council adopted Sacramento City Code Chapter 5.108 relating to Entertainment Establishments. The purpose of this chapter is to regulate the operation of entertainment establishments for the public health, safety, and welfare. Permittees are responsible for controlling patron conduct in and around the establishments and providing adequate security and crowd control.

In accordance with this Code, it is unlawful for any person to provide or permit any entertainment that is open to the public without an Entertainment Permit unless exempt pursuant to this Code. The Entertainment Permit is the property of the City and may not be transferred to another person or location. The Biennial (2-year) Permit is valid for two years and may be renewed in accordance with the Code. A Special Entertainment Permit is limited to events where entertainment will only be offered for a limited period of time not to exceed five days.

There are approximately 70 active two-year entertainment permits in the City of Sacramento. Although the majority of the permits are in Downtown, Old Sacramento, and Midtown, permits are issued to venues throughout the City. Most permits are issued to bars, clubs, and restaurants, but they are also issued to retail stores, coffee bars and hookah lounges.

Certain types of entertainment and events are exempt from permits. Exempt events must still comply with all other applicable laws including noise levels. Current exemptions include, *but are not limited to*:

- Events conducted or sponsored by a tax exempt (non-profit) organization when all proceeds go to the charity;
- Venues with an occupancy of 49 or fewer;
- Events sponsored by a City-authorized business improvement district;
- Events held on City property or the public right-of-way;
- Private parties such as birthday parties and weddings with no cover fee; and,
- Events with only recorded music without dancing and/or disc jockey and no cover fee.

Permittees must comply with conditions to ensure public health, safety, and welfare and observe all federal, state and local laws (e.g., noise abatement laws and alcoholic beverage control regulations). Conditions vary and are unique to each venue. Standard permit conditions include but are not limited to:

- Restrictions related to: type, days, and hours of permitted entertainment; minimum number of licensed security guards required; and patron age limits;
- Responsible Person (Manager) as listed on the permit must be present whenever entertainment is provided;
- Preventing disorderly or obviously intoxicated persons from entering into or remaining within the establishment; and,
- Maintaining the area adjacent to the premises free of litter, debris, and trash and working with adjacent property owners and tenants to maintain area and parking lots within 100 feet.

Program Enforcement

The Sacramento Police Department Entertainment Team monitors entertainment activity. Police can close an establishment if crowd control is not being maintained, or the entertainment permit, City Codes and/or Penal Codes are violated. Police may issue Notice of Violation and/or criminal citations. Notices of Violation are forwarded to the Community Development Department for review and appropriate action. Common violations include:

- Conducting entertainment without a permit;
- Having an inadequate number of licensed security guards present;
- Exceeding maximum occupancy as listed on permit;
- Admitting patrons under the age allowed in the conditions; and,
- Committing State Alcohol Beverage Control (ABC) violations during entertainment events/activities.

If violations are confirmed, corrective actions may include:

- Formal written Notice of Violation (1st offense)
- Administrative Penalty ranging from \$500 up to \$25,000 (2nd offense)
- Administrative Penalty and/or modification, suspension, or revocation of permit (3rd and subsequent offenses)

Serious violations may result in immediate modification, suspension, or revocation and/or administrative penalty regardless of prior warnings or violations.

Proposed Ordinance Revisions

Staff is recommending revisions to the Entertainment Establishments Code to better address current entertainment industry trends and operations. When the Code was originally adopted in 2003, entertainment activities offered were typically disc jockey (DJ) and live bands. And, entertainment venues were mainly nightclubs and bars. However, the types of entertainment offered have changed and now includes karaoke, trivia, sporting demonstrations, and employee dancing. Also, locations providing entertainment include a wider range of businesses such as hookah lounges, coffee shops, retail stores and movie theaters. The proposed revisions will address these trends while allowing entertainment operators to remain competitive in this ever changing industry.

▶ **Definitions – Section 5.108.020**

- Defines a “public agency” to clarify the scope of the permit exemption for entertainment sponsored by government entities.

▶ **Exemptions – Section 5.108.040**

- Revises exemption for government-related entertainment activities to clarify it is limited to entertainment sponsored by that government, and the exemption is not extended to entertainment establishments that lease government property;
- Requires submission of proof of non-profit status before the exemption for non-profit organization applies to the entertainment activities;
- Clarifies requirements for a permit for entertainment activities that occur before or after dance lessons;
- Narrows the exemption for movie theaters to require an entertainment permit for activities that are similar to a nightclub; and,
- Clarifies that the exemption for ambient music does not include the use of amplified sound.

▶ **Application Process – Section 5.108.160**

- Modifies neighbor noticing from 100 feet radius to 500 feet;
- Modifies time for City to approve or deny a 2-year entertainment permit from 45 working days to 60 calendar days for improved tracking;
- Modifies the deadline extension for approval or denial of a 2-year permit from 15 working days to 21 calendar days for improved tracking; and,
- Modifies time for City to approve special-event entertainment permits from 3 working days to 14 calendar days to allow adequate time for inspections and background checks.

▶ **Fees – Section 5.108.180**

- Clearly defines the three types of application fees:
 - New Permit Fee
 - Renewal Permit Fee
 - Special Event Permit Fee
- Establishes two new fees:
 - Inspection Fee: Imposed when additional inspection is required following the initial inspection (e.g., applicant is unable to accommodate or participate in a previously scheduled inspection, violations are not corrected when inspector conducts initial inspection).
 - Modification Request Fee: Imposed when a permittee has submitted more than six modification requests during a 2-year permit term.

▶ **Investigation of Application – Section 5.108.190**

- Adds the following requirements before the City Manager can approve issuance of a permit:
 - Applicant must pay ALL entertainment-related fees and penalties owed to the City (e.g., inspection fee, administrative penalty related to an entertainment violation).
 - Application must be complete, which includes the applicant providing all information as requested and deemed necessary for investigating and processing the application (e.g., Business Operations Tax certificate, Alcohol Beverage Control license).

▶ **Duration of Permit – Section 5.108.210**

- Extends a 2-year permit for an additional 2 years for a maximum term of 4 years if the permit holder meets the following conditions:
 - No history of committing, permitting, or failing to prevent violations of the City Code or any license or permit conditions in connection with the entertainment establishment during the first 2 years.
 - No violations of building and/or fire codes occurred at the establishment during the first 2 years.

▶ **Effect of Denial – Section 5.108.230**

- Makes denial of a permit application have the effect of prohibiting issuance of an entertainment permit for any entertainment activity at the proposed location for 1 year. If the denial is based on the history of certain crimes or prior entertainment permit violations by the applicant or a prospective responsible person, the applicant would also become ineligible to receive an entertainment permit for 1 year.

▶ **Appeals – Section 5.108.260**

- Amends the appeals section to be consistent with other appeal processes for licensing schemes (e.g., tobacco retailers) by directing appeals to a hearing examiner rather the City Council to expedite processing and resolution of appeals.

ORDINANCE NO. 2014-____

Adopted by the Sacramento City Council

_____, 2013

**AMENDING VARIOUS SECTIONS OF CHAPTER 5.108 OF THE SACRAMENTO CITY CODE,
RELATING TO ENTERTAINMENT ESTABLISHMENTS**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

A. The following changes are made to the definitions set forth in section 5.108.020 of the Sacramento City Code:

“Public agency” includes the state government; any city, city and county, or county government; and any department, district, division, commission, board, or other agency, which is authorized by law.

B. Except as specifically amended in subsection A above, section 5.108.020 of the Sacramento City Code remains unchanged and in full force and effect.

SECTION 2.

Section 5.108.040 of the Sacramento City Code is amended to read as follows:

5.108.040 Exemptions from the permit requirement.

The following types of entertainment and events are exempt from the permit required by this chapter. ~~This An~~ exemption does not relieve any entertainment establishment from complying with all other applicable laws, including, but not limited to, Article II and the laws related to noise levels and nuisances, particularly those contained in Title 8.

A. Entertainment sponsored by any agency of the city of Sacramento, the county of Sacramento, the various boards of education, or by any other ~~political subdivision~~ public agency of the state of California. The leasing or subleasing of the real property to an entertainment establishment does not constitute sponsorship of the entertainment by a public agency;

B. Entertainment sponsored by any nonprofit public benefit organization, such as Girl Scouts, Boy Scouts, Little League or Boys and Girls Club, whose primary objective is the sponsoring and control of youth activities and child welfare. If the event is a dance, the following requirements must be met:

1. No person ~~eighteen (18)~~ years of age or older may be admitted as a guest, unless such person is a bona fide student at, or member of, the sponsoring agency or organization;
2. No alcoholic beverages may be served, consumed or permitted on the premises;
3. Chaperones from the sponsoring agency are present on the premises at the rate of two adults, who are at least ~~twenty five (25)~~ years of age ~~or older~~, for every ~~one hundred (100)~~ guests; and
4. The event must finish by 12:00 a.m. and the premises and the adjoining parking

lots must be promptly vacated by all the guests.

C. Entertainment lawfully conducted at any city park, building or recreational facility;

~~D. Entertainment lawfully conducted entirely upon property owned or controlled by a governmental entity;~~

~~_____E._____~~ Entertainment sponsored by a city authorized business improvement district when:

1. The business improvement district is created pursuant to and is abiding by state law, ~~Streets and Highways Code sections 36500 and 36600, et seq.,~~ and in compliance with agreements between the business improvement district and the city;

2. The event is for the purpose of improving the area encompassed by the business improvement district; and

3. The business improvement district is the responsible person for the event.

~~_____FE.~~ Entertainment limited to the use of a radio, music recording machine, juke box, television, video games, video programs, or recorded music by an establishment that does not permit dancing or karaoke;

~~_____GF.~~ Entertainment provided for members and their guests at a private club having an established membership when admission is not open to the public. For purposes of this section, private club means corporations or associations operated solely for objects of national, social, fraternal, patriotic, political, or athletic nature, in which membership is by application and regular dues are charged, and the advantages of which club belong to members, and the operation of which is not primarily for monetary gain;

~~_____HG.~~ Entertainment provided for invited guests at a private event such as a wedding reception, banquet, or celebration where there is no admission charge;

~~H.~~ Entertainment conducted in connection with a regularly established theme park;

~~_____I.~~ Parades;

~~_____KJ.~~ Street performers such as musicians, singers or mimes;

~~_____LK.~~ Entertainment conducted on a pedestrian mall under a permit issued pursuant to ~~Chapter chapter~~ 12.44;

L. Entertainment conducted or sponsored by any religious organization, bona fide club, organization, society or association that is exempt from taxation pursuant to United States Internal Revenue Code section 501(c)(3); when all proceeds, if any, arising from such entertainment are used exclusively for the benevolent purposes of such religious organization, club, society or association. Written proof of the tax-exempt status shall be provided to the city manager at least 7 days before the entertainment occurs;

~~_____NM.~~ Performances by the students at educational institutions as defined by the California Education Code where such performances are part of an educational or instructional curriculum or program;

~~_____ON.~~ TheatersEntertainment in theaters that does not include a disc jockey, karaoke, dancing by patrons, or a live musical presentation;

~~_____P.~~ Motion picture theaters not providing live entertainment;

~~_____QO.~~ Dance lessons, theatrical and performing arts lessons and student recitals, provided that dances, theatrical presentations or other performances that occur before or after the lessons or recitals are not exempt from the permit requirement of section 5.108.030;

~~_____RP.~~ Book readings, book signings, poetry recitations, and any other similar entertainment consisting of the spoken word, including plays;

~~_____SQ.~~ Fund-raisers for a political cause;

~~_____TR.~~ Entertainment consisting of ambient or incidental music provided for guests or patrons by musicians such as a piano player, harpist, strolling violinist, mariachi band, guitarist or band, if a sound amplifier is not utilized during the musical presentation. If there is an admission charge is required to observe or attend, such the entertainment, the music will is not be considered ambient or incidental;

~~_____US.~~ Entertainment conducted in any Any establishment, or venue with a or assemblage of forty nine (49) persons or less, as described in the maximum occupancy load of 49 persons or fewer;

~~_____VT.~~ Entertainment conducted in any hotel or motel having in excess of one hundred (100) rentable rooms or suites;

~~_____WU.~~ Entertainment lawfully conducted at any of the following regulated businesses:

1. “Adult-related establishments,” regulated under Chapter chapter 5.04;
2. “Amusement arcades,” regulated under Chapter chapter 5.12. However, if entertainment, other than the operation of amusement machines, is conducted on the premises of any amusement arcade, such amusement arcade shall not, by virtue of this provision, be exempt from the permit requirement of this chapter;
3. “Bingo,” regulated under Chapter chapter 5.24;
4. “Cardrooms,” regulated under Chapter chapter 5.32. However, if entertainment, other than the playing of cards, is conducted on the premises of any cardroom, such cardroom shall not, by virtue of this provision, be exempt from the permit requirement of this chapter;
5. “Billiard and Pool Parlors,” regulated under Chapter chapter 5.20. However, if entertainment, other than the playing of billiards or pool, is conducted on the premises of any billiard or pool parlor, such billiard or pool parlor shall not, by virtue of this provision, be exempt from the permit requirement of this chapter;
6. “Miniature Golf,” regulated under Chapter chapter 5.84. However, if entertainment, other than the playing of miniature golf, is conducted on the premises of any miniature golf establishment, such miniature golf establishment shall not, by virtue of this provision, be exempt from the permit requirement of this chapter.

~~_____XV.~~ The normal and customary fitness services provided by an athletic club or

fitness center.

SECTION 3.

Section 5.108.160 of the Sacramento City Code is amended to read as follows:

5.108.160 Application for permit—Posting premises.

A. ~~All a~~ Applications for permits shall be filed with the city manager on ~~such~~ forms ~~as he or she may~~ prescribed by the city manager, and shall contain the following:

1. The name and permanent address of the applicant and all other persons having a financial interest in the operation of the entertainment, business or premises where the entertainment is to be located;
2. A description of the proposed entertainment, including the maximum number of persons who are expected to be present within the entertainment establishment at any one time;
3. The proposed opening date and hours of operation of the entertainment establishment;
4. For special or limited duration events, the date or dates, hours and location of the proposed entertainment;
5. The proposed security arrangements for the safety and control of patrons;
6. The name or names of the person or persons ~~having management managing or supervision supervising authority over~~ the proposed entertainment, or any business or premises wherein the entertainment is proposed to be located;
7. Whether or not the applicant or any other responsible person(s) have been convicted of a misdemeanor or felony offense within the past five years, the nature of such offense(s), and the sentence(s) ~~received therefor imposed~~;
8. Written consent for the proposed entertainment on the premises from the owner of the property on which the entertainment is to be conducted; and
9. Such other information as the city manager ~~shall deem~~s necessary for the proper processing and review of the application.

B. The applicant and all responsible persons shall submit to fingerprinting by the chief of police.

C. An application is complete when all the requirements of subsections A and B have been satisfied. Upon receipt of a complete application, the city manager shall provide to the applicant a notice of application for entertainment permit. The applicant shall post the notice on the exterior of the premises for which the permit is sought within ~~twenty four (24)~~ hours after receiving the notice and for no less than ~~fourteen (14)~~ consecutive days, or in the case of an application for an entertainment permit for a special event for a period no less than ~~forty eight (48)~~ hours, in a location that allows

interested members of the public to read the notice. In addition, each applicant, other than an applicant for an entertainment permit for a special event, shall mail a copy of the notice to all owners of property within a radius of ~~one hundred (100)~~500 feet of the premises for which the permit is sought within five calendar days of receiving the notice.

D. Except as provided below, the city manager shall either approve or deny the entertainment permit within ~~60 calendar forty five (45) working~~ days of receipt of the complete application. The city manager may extend the time for consideration of the application for up to an additional ~~21 calendar fifteen (15) working~~ days with the written consent of the applicant. The failure of the city manager to timely act shall constitute approval of the permit.

E. The city manager shall either approve or deny the entertainment permit for a special event within ~~14 calendar three working~~ days of receipt of the complete application. The city manager may extend the time for consideration of the application for up to an additional three working days with the written consent of the applicant. The failure of the city manager to timely act shall constitute approval of the permit.

SECTION 4.

Section 5.108.180 of the Sacramento City Code is amended to read as follows:

5.108.180 Fees.

A. The following entertainment permit program fees shall be imposed in amounts established by resolution of the city council:

1. New Permit Fee. Every application for a new entertainment permit shall must be accompanied by a nonrefundable application fee as established by resolution of the city council.

2. Renewal Permit Fee. Every application to renew an entertainment permit must be accompanied by a nonrefundable application fee.

3. Special Event Permit Fees. Every application for an entertainment permit for a special event must be accompanied by a nonrefundable application fee.

4. Inspection Fees.

a. Initial Inspection. Initial inspection of the location where the entertainment is to be conducted shall be done at no charge to the applicant or permittee.

b. Re-Inspection. There is a nonrefundable fee for every inspection after the initial inspection.

c. If an applicant or permittee agrees with the city manager upon a day and time for an inspection and the applicant or permittee fails by act or omission to provide access onto the premises, the failure to provide access to the premises constitutes an inspection for the sole purpose of calculating inspection fees pursuant to this section.

5. Modification Fee. Each permittee may submit up to six modification requests to the city manager during the two-year permit term. Every additional request within the two-year permit term must be accompanied by a nonrefundable modification fee. For the purposes of this subsection only, a request by a permittee to update the responsible persons listed on the permit does not constitute a request to modify the permit.

~~B. This application~~ The fees established in this section shall beare in addition to the city's business operation tax and any other license or permit fee imposed by this code upon the applicant or permittee.

SECTION 5.

A. Subsection B of section 5.108.190 of the Sacramento City Code is amended to read as follows:

B. The city manager shall approve the issuance of the entertainment permit if he or she finds:

1. That issuance of the permit and conduct of the entertainment at the proposed location, as conditioned, is consistent with federal, state and local laws, rules, regulations and any existing special permit(s); and

2. That issuance of the permit at the proposed location, as conditioned, will not constitute an undue burden on the neighborhood because of its proximity to residences, inadequate parking or other neighborhood circumstances and will not interfere with the reasonable use and enjoyment of the neighborhood by its residents; and

3. Neither the applicant or any responsible person or principal of the applicant has, within the past five years, been convicted of a felony or other crime of moral turpitude that is substantially related to the qualifications, functions or duties of a proprietor of premises upon which the entertainment activities are conducted; and

4. Neither the applicant or any responsible person or principal of the applicant has a history of committing, permitting or failing to prevent significant violations of the city code, or any license or permit, in connection with an entertainment establishment for which he or she was a responsible person; and

5. It does not appear, based upon the information before the city manager, that the applicant has provided false or misleading material information in the application; ~~;~~
and

6. That the application is complete; and

7. The applicant does not owe the City of Sacramento a fee authorized by section 5.108.180 or an administrative penalty for violation of a provision of this chapter or a condition of an entertainment permit issued pursuant to this chapter.

B. Except as amended in subsection A above, section 5.108.190 of the Sacramento City Code remains unchanged and in full force and effect.

SECTION 6.

Section 5.108.210 of the Sacramento City Code is amended to read as follows:

5.108.210 Duration of permit.

A. Except as provided below, a permit issued pursuant to this chapter shall be valid for two years from the date it was issued subject to any conditions or restrictions existing at the time it was issued.

B. A permit renewed pursuant to section 5.108.250 may be extended two additional years, if both of the following conditions exist:

1. No permittee, responsible person, or principal of the applicant has a history of committing, permitting, or failing to prevent violations of the city code, or any license or permit conditions, in connection with an entertainment establishment during the last two years.

2. No violations of building or fire codes occurred at the entertainment establishment during the duration of the renewed permit.

C. A permit issued pursuant to this chapter for a special event shall be valid for the term stated in the permit, but in no event for a period greater than one year from the date it was issued.

SECTION 7.

Section 5.108.230 of the Sacramento City Code is amended to read as follows:

5.108.230 Effect of denial.

~~In the event~~ if an application for a permit is denied by the city manager, no application for a permit to conduct ~~any entertainment the proposed~~ activity at the same location shall be considered by the city manager for a period of one year from the date of denial. In addition, if the denial is for failure to satisfy an eligibility requirement stated in subsection 5.108.190.B.4 or 5.108.190.B.5, the city manager shall not consider any application from the same applicant for a period of one year.

SECTION 8.

Section 5.108.250 of the Sacramento City Code is amended to read as follows:

5.108.250 Renewal of permits.

A. A permittee may apply for permit renewal by submitting to the city manager before the expiration of ~~any~~ permit, a renewal application and a non-refundable renewal fee in an amount set by resolution of the city council. A permit application submitted after expiration of the applicant's most recent permit shall be considered an application for a new permit.

B. If a timely and complete application for renewal is filed, the permit's expiration shall be stayed until a decision on the renewal application is issued.

C. The city manager shall either approve or deny the renewal of a permit within 60 ~~calendar forty five (45) working~~ days of receipt of the complete application. The city manager may extend the time for consideration of the application for up to an additional 21 ~~calendar fifteen (15) working~~ days with the written consent of the applicant. The failure of the city manager to timely act shall constitute approval of the renewal of the permit.

D. The city manager shall approve the renewal of a permit if he or she finds that no circumstances existed during the term of the permit, existed at the time of submission

of an application for renewal, or existed at any time during the review of the application for renewal that is inconsistent with any finding required for approval of a new permit for the applicant or location as specified in ~~Section-section~~ 5.108.190 or would justify the suspension, modification or revocation of the permit as specified in ~~Section-section~~ 5.108.240. Notwithstanding the above, the city manager may add, delete or modify the permit conditions as a condition of permit renewal, using the criteria set forth in ~~Section-section~~ 5.108.190~~(D)~~.

SECTION 9.

Section 5.108.260 of the Sacramento City Code is amended to read as follows:

5.108.260 Denial, suspension, modification, revocation and conditions—Appeals.

A. Appeal to Hearing Examiner.

1. Except as provided in Section 5.108.240, any applicant or permittee aggrieved by the decision of the city manager, in denying, suspending, modifying, or revoking a permit or imposing conditions on the permit, may appeal the decision to the city council in accordance with Chapter 1.24. The appeal shall be made by filing a written notice thereof with the city clerk not later than ten (10) calendar days after notice of the decision of the city manager, is personally served upon or mailed to the permittee. The council shall hold a hearing on the appeal and its decision thereon shall be final. Instead of hearing the appeal, the council may refer the matter to a hearing examiner pursuant to Chapter 1.24, in which case the hearing examiner's decision shall be final a hearing examiner by submitting a written appeal to the city manager within 10 calendar days from the date of service of the notice of denial, suspension, modification, or revocation. The written appeal shall contain:

a. A brief statement in ordinary and concise language of the specific action protested, together with any material facts claimed to support the contentions of the appellant;

b. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed or otherwise set aside;

c. The signatures of all parties named as appellants and their official mailing addresses; and

d. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

2. The appeal hearing shall be conducted by a hearing examiner appointed pursuant to section 8.04.070.

3. Upon receipt of any appeal filed pursuant to this section, the city manager shall transmit the appeal to the secretary of the hearing examiner who shall calendar it for hearing as follows:

a. If the appeal is received by the city manager not later than 15 days prior to the next regular appeal hearing, it shall be calendared for hearing at said meeting.

b. If the appeal is received by the city manager on a date fewer than 15 days prior

to the next appeal hearing, it shall be calendared for the next subsequent appeal hearing.

4. Written notice of the time and place of the hearing shall be given at least 10 calendar days prior to the date of the hearing to each appellant by the secretary of the hearing examiner either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal.

5. Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the notice and order, or any portion thereof.

6. Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.

7. The hearing examiner shall have the authority to issue subpoenas compelling witnesses to appear and provide testimony or subpoena duces tecum compelling witnesses to produce documents. The hearing examiner shall issue a subpoena only upon a showing of reasonable necessity by the requesting party. Failure of either party to comply with any subpoena may be considered by the hearing examiner in making a decision regarding the imposition of administrative penalties.

8. In the case of a suspension, modification, or revocation, the permittee may continue to conduct entertainment during the pendency of any appeal.

B. Hearings—Generally.

1. At the time set for hearing, the hearing examiner shall proceed to hear the testimony of the city manager, the appellant, and other competent persons, including members of the public, respecting those matters or issues specifically listed by the appellant in the notice of appeal.

2. The proceedings at the hearing shall be electronically recorded. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.

3. The hearing examiner may, upon request of the appellant or upon request of the city manager, grant continuances from time to time for good cause shown, or upon his or her own motion.

4. In any proceedings under this chapter, the hearing examiner has the power to administer oaths and affirmations and to certify to official acts.

C. Conduct of Hearing.

1. Hearings need not be conducted according to the technical rules relating to evidence and witnesses. California Government Code section 11513, subsections (a), (b) and (c) as presently written or hereinafter amended shall apply to hearings under this chapter.

2. Oral evidence shall be taken only upon oath or affirmation.

3. Irrelevant and unduly repetitious evidence shall be excluded.

4. Each party shall have these rights, among others:

a. To call and examine witnesses on any matter relevant to the issues of the hearing;

b. To introduce documentary and physical evidence;

c. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;

d. To impeach any witness regardless of which party first called the witness to testify;

e. To rebut the evidence presented against the party; and

f. To represent himself, herself, or itself or to be represented by anyone of his, her, or its choice who is lawfully permitted to do so.

5. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of this state or that may appear in any of the official records of the city or any of its departments.

D. Form and Contents of Decision—Finality of Decision.

1. If it is shown, by a preponderance of the evidence, that one or more bases exist to deny, suspend, modify, or revoke the permit, the hearing examiner shall affirm the city manager's decision to deny, suspend, modify, or revoke the permit. The decision of the hearing examiner shall be in writing and shall contain findings of fact and a determination of the issues presented.

2. The decision shall inform the appellant that the decision is a final decision and that the time for judicial review is governed by California Code of Civil Procedure section 1094.6. Copies of the decision shall be delivered to the parties personally or sent by certified mail to the address shown on the appeal. The decision shall be final when signed by the hearing examiner and served as provided in this section.

ORDINANCE NO. 2014-____

Adopted by the Sacramento City Council

_____, 2013

**AMENDING VARIOUS SECTIONS OF CHAPTER 5.108 OF THE SACRAMENTO CITY CODE,
RELATING TO ENTERTAINMENT ESTABLISHMENTS**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

A. The following changes are made to the definitions set forth in section 5.108.020 of the Sacramento City Code:

“Public agency” includes the state government; any city, city and county, or county government; and any department, district, division, commission, board, or other agency, which is authorized by law.

B. Except as specifically amended in subsection A above, section 5.108.020 of the Sacramento City Code remains unchanged and in full force and effect.

SECTION 2.

Section 5.108.040 of the Sacramento City Code is amended to read as follows:

5.108.040 Exemptions from the permit requirement.

The following types of entertainment and events are exempt from the permit required by this chapter. An exemption does not relieve any entertainment establishment from complying with all other applicable laws, including, but not limited to, Article II and the laws related to noise levels and nuisances, particularly those contained in Title 8.

A. Entertainment sponsored by any agency of the city of Sacramento, the county of Sacramento, the various boards of education, or by any other public agency of the state of California. The leasing or subleasing of the real property to an entertainment establishment does not constitute sponsorship of the entertainment by a public agency;

B. Entertainment sponsored by any nonprofit public benefit organization, such as Girl Scouts, Boy Scouts, Little League or Boys and Girls Club, whose primary objective is the sponsoring and control of youth activities and child welfare. If the event is a dance, the following requirements must be met:

1. No person 18 years of age or older may be admitted as a guest, unless such person is a bona fide student at, or member of, the sponsoring agency or organization;
2. No alcoholic beverages may be served, consumed or permitted on the premises;
3. Chaperones from the sponsoring agency are present on the premises at the rate of two adults, who are at least 25 years of age, for every 100 guests; and
4. The event must finish by 12:00 a.m. and the premises and the adjoining parking lots must be promptly vacated by all the guests.

C. Entertainment lawfully conducted at any city park, building or recreational

facility;

D. Entertainment sponsored by a city authorized business improvement district when:

1. The business improvement district is created pursuant to and is abiding by state law, and in compliance with agreements between the business improvement district and the city;
2. The event is for the purpose of improving the area encompassed by the business improvement district; and
3. The business improvement district is the responsible person for the event.

E. Entertainment limited to the use of a radio, music recording machine, juke box, television, video games, video programs, or recorded music by an establishment that does not permit dancing or karaoke;

F. Entertainment provided for members and their guests at a private club having an established membership when admission is not open to the public. For purposes of this section, private club means corporations or associations operated solely for objects of national, social, fraternal, patriotic, political, or athletic nature, in which membership is by application and regular dues are charged, and the advantages of which club belong to members, and the operation of which is not primarily for monetary gain;

G. Entertainment provided for invited guests at a private event such as a wedding reception, banquet, or celebration where there is no admission charge;

H. Entertainment conducted in connection with a regularly established theme park;

I. Parades;

J. Street performers such as musicians, singers or mimes;

K. Entertainment conducted on a pedestrian mall under a permit issued pursuant to chapter 12.44;

L. Entertainment conducted or sponsored by any religious organization, bona fide club, organization, society or association that is exempt from taxation pursuant to United States Internal Revenue Code section 501(c)(3); when all proceeds, if any, arising from such entertainment are used exclusively for the benevolent purposes of such religious organization, club, society or association. Written proof of the tax-exempt status shall be provided to the city manager at least 7 days before the entertainment occurs;

M. Performances by the students at educational institutions as defined by the California Education Code where such performances are part of an educational or instructional curriculum or program;

N. Entertainment in theaters that does not include a disc jockey, karaoke, dancing by patrons, or a live musical presentation;

O. Dance lessons, theatrical and performing arts lessons and student recitals, provided that dances, theatrical presentations or other performances that occur before or after the lessons or recitals are not exempt from the permit requirement of section

5.108.030;

P. Book readings, book signings, poetry recitations, and any other similar entertainment consisting of the spoken word, including plays;

Q. Fund-raisers for a political cause;

R. Entertainment consisting of ambient or incidental music provided for guests or patrons by musicians such as a piano player, harpist, strolling violinist, mariachi band, guitarist or band, if a sound amplifier is not utilized during the musical presentation. If an admission charge is required to observe or attend, the entertainment, the music is not considered ambient or incidental;

S. Entertainment conducted in any establishment or venue with a maximum occupancy load of 49 persons or fewer;

T. Entertainment conducted in any hotel or motel having in excess of 100 rentable rooms or suites;

U. Entertainment lawfully conducted at any of the following regulated businesses:

1. "Adult-related establishments," regulated under chapter 5.04;

2. "Amusement arcades," regulated under chapter 5.12. However, if entertainment, other than the operation of amusement machines, is conducted on the premises of any amusement arcade, such amusement arcade shall not, by virtue of this provision, be exempt from the permit requirement of this chapter;

3. "Bingo," regulated under chapter 5.24;

4. "Cardrooms," regulated under chapter 5.32. However, if entertainment, other than the playing of cards, is conducted on the premises of any cardroom, such cardroom shall not, by virtue of this provision, be exempt from the permit requirement of this chapter;

5. "Billiard and Pool Parlors," regulated under chapter 5.20. However, if entertainment, other than the playing of billiards or pool, is conducted on the premises of any billiard or pool parlor, such billiard or pool parlor shall not, by virtue of this provision, be exempt from the permit requirement of this chapter;

6. "Miniature Golf," regulated under chapter 5.84. However, if entertainment, other than the playing of miniature golf, is conducted on the premises of any miniature golf establishment, such miniature golf establishment shall not, by virtue of this provision, be exempt from the permit requirement of this chapter.

V. The normal and customary fitness services provided by an athletic club or fitness center.

SECTION 3.

Section 5.108.160 of the Sacramento City Code is amended to read as follows:

5.108.160 Application for permit—Posting premises.

A. Applications for permits shall be filed with the city manager on forms prescribed by the city manager, and shall contain the following:

1. The name and permanent address of the applicant and all other persons having a financial interest in the operation of the entertainment, business or premises where the entertainment is to be located;
2. A description of the proposed entertainment, including the maximum number of persons who are expected to be present within the entertainment establishment at any one time;
3. The proposed opening date and hours of operation of the entertainment establishment;
4. For special or limited duration events, the date or dates, hours and location of the proposed entertainment;
5. The proposed security arrangements for the safety and control of patrons;
6. The name or names of the person or persons managing or supervising the proposed entertainment, or any business or premises wherein the entertainment is proposed to be located;
7. Whether or not the applicant or any other responsible person(s) have been convicted of a misdemeanor or felony offense within the past five years, the nature of such offense(s), and the sentence(s) imposed;
8. Written consent for the proposed entertainment on the premises from the owner of the property on which the entertainment is to be conducted; and
9. Such other information as the city manager deems necessary for the proper processing and review of the application.

B. The applicant and all responsible persons shall submit to fingerprinting by the chief of police.

C. An application is complete when all the requirements of subsections A and B have been satisfied. Upon receipt of a complete application, the city manager shall provide to the applicant a notice of application for entertainment permit. The applicant shall post the notice on the exterior of the premises for which the permit is sought within 24 hours after receiving the notice and for no less than 14 consecutive days, or in the case of an application for an entertainment permit for a special event for a period no less than 48 hours, in a location that allows interested members of the public to read the notice. In addition, each applicant, other than an applicant for an entertainment permit for a special event, shall mail a copy of the notice to all owners of property within a radius of 500 feet of the premises for which the permit is sought within five calendar days of receiving the notice.

D. Except as provided below, the city manager shall either approve or deny the entertainment permit within 60 calendar days of receipt of the complete application. The city manager may extend the time for consideration of the application for up to an additional 21 calendar days with the written consent of the applicant. The failure of the city manager to timely act shall constitute approval of the permit.

E. The city manager shall either approve or deny the entertainment permit for a special event within 14 calendar days of receipt of the complete application. The city manager may extend the time for consideration of the application for up to an additional three working days with the written consent of the applicant. The failure of the city manager to timely act shall constitute approval of the permit.

SECTION 4.

Section 5.108.180 of the Sacramento City Code is amended to read as follows:

5.108.180 Fees.

A. The following entertainment permit program fees shall be imposed in amounts established by resolution of the city council:

1. **New Permit Fee.** Every application for a new entertainment permit must be accompanied by a nonrefundable application fee.
 2. **Renewal Permit Fee.** Every application to renew an entertainment permit must be accompanied by a nonrefundable application fee.
 3. **Special Event Permit Fees.** Every application for an entertainment permit for a special event must be accompanied by a nonrefundable application fee.
 4. **Inspection Fees.**
 - a. **Initial Inspection.** Initial inspection of the location where the entertainment is to be conducted shall be done at no charge to the applicant or permittee.
 - b. **Re-Inspection.** There is a nonrefundable fee for every inspection after the initial inspection.
 - c. If an applicant or permittee agrees with the city manager upon a day and time for an inspection and the applicant or permittee fails by act or omission to provide access onto the premises, the failure to provide access to the premises constitutes an inspection for the sole purpose of calculating inspection fees pursuant to this section.
 5. **Modification Fee.** Each permittee may submit up to six modification requests to the city manager during the two-year permit term. Every additional request within the two-year permit term must be accompanied by a nonrefundable modification fee. For the purposes of this subsection only, a request by a permittee to update the responsible persons listed on the permit does not constitute a request to modify the permit.
- B. The fees established in this section are in addition to the city's business operation tax and any other license or permit fee imposed by this code upon the applicant or permittee.

SECTION 5.

A. Subsection B of section 5.108.190 of the Sacramento City Code is amended to read as follows:

B. The city manager shall approve the issuance of the entertainment permit if he or she finds:

1. That issuance of the permit and conduct of the entertainment at the proposed location, as conditioned, is consistent with federal, state and local laws, rules, regulations and any existing special permit(s); and

2. That issuance of the permit at the proposed location, as conditioned, will not constitute an undue burden on the neighborhood because of its proximity to residences, inadequate parking or other neighborhood circumstances and will not interfere with the reasonable use and enjoyment of the neighborhood by its residents; and

3. Neither the applicant or any responsible person or principal of the applicant has, within the past five years, been convicted of a felony or other crime of moral turpitude that is substantially related to the qualifications, functions or duties of a proprietor of premises upon which the entertainment activities are conducted; and

4. Neither the applicant or any responsible person or principal of the applicant has a history of committing, permitting or failing to prevent significant violations of the city code, or any license or permit, in connection with an entertainment establishment for which he or she was a responsible person; and

5. It does not appear, based upon the information before the city manager, that the applicant has provided false or misleading material information in the application; and

6. That the application is complete; and

7. The applicant does not owe the City of Sacramento a fee authorized by section 5.108.180 or an administrative penalty for violation of a provision of this chapter or a condition of an entertainment permit issued pursuant to this chapter.

B. Except as amended in subsection A above, section 5.108.190 of the Sacramento City Code remains unchanged and in full force and effect.

SECTION 6.

Section 5.108.210 of the Sacramento City Code is amended to read as follows:

5.108.210 Duration of permit.

A. Except as provided below, a permit issued pursuant to this chapter shall be valid for two years from the date it was issued subject to any conditions or restrictions existing at the time it was issued.

B. A permit renewed pursuant to section 5.108.250 may be extended two additional years, if both of the following conditions exist:

1. No permittee, responsible person, or principal of the applicant has a history of committing, permitting, or failing to prevent violations of the city code, or any license or permit conditions, in connection with an entertainment establishment during the last two years.

2. No violations of building or fire codes occurred at the entertainment establishment during the duration of the renewed permit.

C. A permit issued pursuant to this chapter for a special event is valid for the term stated in the permit, but in no event for a period greater than one year from the date it was issued.

SECTION 7.

Section 5.108.230 of the Sacramento City Code is amended to read as follows:

5.108.230 Effect of denial.

If an application for a permit is denied by the city manager, no application for a permit to conduct any entertainment activity at the same location shall be considered by the city manager for a period of one year from the date of denial. In addition, if the denial is for failure to satisfy an eligibility requirement stated in subsection 5.108.190.B.4 or 5.108.190.B.5, the city manager shall not consider any application from the same applicant for a period of one year.

SECTION 8.

Section 5.108.250 of the Sacramento City Code is amended to read as follows:

5.108.250 Renewal of permits.

A. A permittee may apply for permit renewal by submitting to the city manager before the expiration of a permit, a renewal application and a non-refundable renewal fee in an amount set by resolution of the city council. A permit application submitted after expiration of the applicant's most recent permit shall be considered an application for a new permit.

B. If a timely and complete application for renewal is filed, the permit's expiration shall be stayed until a decision on the renewal application is issued.

C. The city manager shall either approve or deny the renewal of a permit within 60 calendar days of receipt of the complete application. The city manager may extend the time for consideration of the application for up to an additional 21 calendar days with the written consent of the applicant. The failure of the city manager to timely act shall constitute approval of the renewal of the permit.

D. The city manager shall approve the renewal of a permit if he or she finds that no circumstances existed during the term of the permit, existed at the time of submission of an application for renewal, or existed at any time during the review of the application for renewal that is inconsistent with any finding required for approval of a new permit for the applicant or location as specified in section 5.108.190 or would justify the suspension, modification or revocation of the permit as specified in section 5.108.240. Notwithstanding the above, the city manager may add, delete or modify the permit conditions as a condition of permit renewal, using the criteria set forth in section 5.108.190.D.

SECTION 9.

Section 5.108.260 of the Sacramento City Code is amended to read as follows:

5.108.260 Denial, suspension, modification, revocation and conditions—Appeals.

A. Appeal to Hearing Examiner.

1. Except as provided in section 5.108.240, any applicant or permittee aggrieved by the decision of the city manager, in denying, suspending, modifying, or revoking a permit or imposing conditions on the permit, may appeal the decision to a hearing examiner by submitting a written appeal to the city manager within 10 calendar days from the date of service of the notice of denial, suspension, modification, or revocation. The written appeal shall contain:

a. A brief statement in ordinary and concise language of the specific action protested, together with any material facts claimed to support the contentions of the appellant;

b. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed or otherwise set aside;

c. The signatures of all parties named as appellants and their official mailing addresses; and

d. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

2. The appeal hearing shall be conducted by a hearing examiner appointed pursuant to section 8.04.070.

3. Upon receipt of any appeal filed pursuant to this section, the city manager shall transmit the appeal to the secretary of the hearing examiner who shall calendar it for hearing as follows:

a. If the appeal is received by the city manager not later than 15 days prior to the next regular appeal hearing, it shall be calendared for hearing at said meeting.

b. If the appeal is received by the city manager on a date fewer than 15 days prior to the next appeal hearing, it shall be calendared for the next subsequent appeal hearing.

4. Written notice of the time and place of the hearing shall be given at least 10 calendar days prior to the date of the hearing to each appellant by the secretary of the hearing examiner either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal.

5. Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the notice and order, or any portion thereof.

6. Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.

7. The hearing examiner shall have the authority to issue subpoenas compelling witnesses to appear and provide testimony or subpoena duces tecum compelling witnesses to produce documents. The hearing examiner shall issue a subpoena only upon a showing of reasonable necessity by the requesting party. Failure of either party to comply with any subpoena may be considered by the hearing examiner in making a decision regarding the imposition of administrative penalties.

8. In the case of a suspension, modification, or revocation, the permittee may continue to conduct entertainment during the pendency of any appeal.

B. Hearings—Generally.

1. At the time set for hearing, the hearing examiner shall proceed to hear the testimony of the city manager, the appellant, and other competent persons, including members of the public, respecting those matters or issues specifically listed by the appellant in the notice of appeal.

2. The proceedings at the hearing shall be electronically recorded. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.

3. The hearing examiner may, upon request of the appellant or upon request of the city manager, grant continuances from time to time for good cause shown, or upon his or her own motion.

4. In any proceedings under this chapter, the hearing examiner has the power to administer oaths and affirmations and to certify to official acts.

C. Conduct of Hearing.

1. Hearings need not be conducted according to the technical rules relating to evidence and witnesses. California Government Code section 11513, subsections (a), (b) and (c) as presently written or hereinafter amended shall apply to hearings under this chapter.

2. Oral evidence shall be taken only upon oath or affirmation.

3. Irrelevant and unduly repetitious evidence shall be excluded.

4. Each party shall have these rights, among others:

a. To call and examine witnesses on any matter relevant to the issues of the hearing;

b. To introduce documentary and physical evidence;

c. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;

d. To impeach any witness regardless of which party first called the witness to testify;

e. To rebut the evidence presented against the party; and

f. To represent himself, herself, or itself or to be represented by anyone of his, her, or its choice who is lawfully permitted to do so.

5. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of this state or that may appear in any of the official records of the city or any of its departments.

D. Form and Contents of Decision—Finality of Decision.

1. If it is shown, by a preponderance of the evidence, that one or more bases exist to deny, suspend, modify, or revoke the permit, the hearing examiner shall affirm the city manager's decision to deny, suspend, modify, or revoke the permit. The decision of the hearing examiner shall be in writing and shall contain findings of fact and a determination of the issues presented.

2. The decision shall inform the appellant that the decision is a final decision and that the time for judicial review is governed by California Code of Civil Procedure section 1094.6. Copies of the decision shall be delivered to the parties personally or sent by certified mail to the address shown on the appeal. The decision shall be final when signed by the hearing examiner and served as provided in this section.