

December 5, 2006

**Honorable Mayor and Members of the
Hermosa Beach City Council**

**Regular Meeting of
December 12, 2006**

SUBJECT: INTRODUCTION ON FIRST READING OF ENTERTAINMENT PERMIT
ORDINANCE

Recommendation:

That the Council introduce the attached ordinance on first reading: Ordinance No. 06-____,

AN ORDINANCE OF THE CITY OF HERMOSA BEACH
REQUIRING AN ENTERTAINMENT PERMIT FOR ALL
LIVE ENTERTAINMENT BY ADDING CHAPTER 5.78 TO
TITLE 5 OF THE HERMOSA BEACH MUNICIPAL CODE

Analysis

The City Council directed the City Attorney to draft an ordinance requiring all businesses in Hermosa Beach that provide live entertainment to obtain an entertainment permit. The permit is a regulatory business license intended to regulate the operation of entertainment establishments.

The ordinance requires that every business owner, operator, or manager providing or permitting live entertainment, as defined, must file an application with the City Manager describing the proposed entertainment, the nature of the business, and the background of those persons responsible for managing and supervising the establishment.

The ordinance also requires entertainment promoters to obtain an entertainment permit prior to promoting events or conducting any business within the City. The promoter is required to file an entertainment permit application with the City Manager describing number of events proposed to be conducted, whether the events are recurring on a regular schedule, and the location or locations of proposed events.

The City Manager will conduct a public hearing and approve the application if certain standards are met. The City Manager is also authorized to condition the operation of an entertainment establishment or event promotion in order to assure that it operates in a safe manner consistent with public health and safety.

If the permit holder fails to operate the entertainment establishment pursuant to the permit requirements and any other code requirements, the ordinance sets out a procedure for suspension and revocation of the permit. A permit will be suspended if the City Manager determines that use of the permit is creating an immediate and significant threat to the public safety and welfare. However, the City Council must hold a public hearing to permanently revoke the permit.

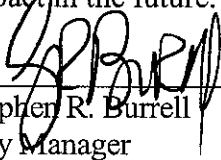
The entertainment permit is a regulatory business license and not a land use permit. This permit is required in addition to any Conditional Use Permit (CUP), or other land use approval, required to operate an entertainment establishment. An entertainment permit does not create a vested property right, does not run with the land, and must be renewed annually. In the event that an entertainment permit and a CUP contain conflicting conditions, the conditions on the later approved permit will prevail.

Entertainment permits must be renewed annually and a new permit is required whenever there is a change in ownership, change of business location, or change of the name of the entertainment establishment. Lastly, any person who is aggrieved by the City Manager's decision to issue, deny, or suspend a permit may appeal the decision to the City Council.

The ordinance provides a six month grace period to comply with this new permit requirement and permits will be required by July 11, 2007.

Fiscal Impact

Collection of application fees will have a neutral fiscal impact. Enforcement costs may create a fiscal impact in the future.



Stephen R. Burrell
City Manager

Attachments

1. Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HERMOSA BEACH
REQUIRING AN ENTERTAINMENT PERMIT FOR ALL
LIVE ENTERTAINMENT BY ADDING CHAPTER 5.78
TO TITLE 5 OF THE HERMOSA BEACH MUNICIPAL
CODE

The City Council of the City of Hermosa Beach does hereby ordain as follows:

Section 1. Chapter 5.78 is added to Title 5 of the Hermosa Beach municipal Code to read as follows:

Chapter 5.78
ENTERTAINMENT PERMIT

5.78.010	Purpose and Intent.
5.78.020	Definitions.
5.78.030	Permit Requirement.
5.78.040	Exemption from Permit Requirement.
5.78.050	Application for Permit.
5.78.060	Issuance of Permit- Investigation and Hearing.
5.78.070	Standards for Approval of Permit.
5.78.080	Conditions.
5.78.090	Permit Transfers and Changes.
5.78.100	Expiration and Renewal of Permit.
5.78.110	Emergency Suspension.
5.78.120	Revocation.
5.78.130	Modification Requested by Permit Holder
5.78.140	Appeal.

5.78.010 Purpose and Intent.

The City Council of the City of Hermosa Beach finds that operation of business establishments in the City providing live entertainment creates special circumstances pertaining to noise, disorderly conduct by patrons, underage drinking and similar such conditions as to warrant regulation through a business license.

Therefore, it is the purpose of this chapter to regulate the operation of entertainment establishments and entertainment promoters to promote the public health, safety and welfare and to ensure that the operators of these establishments have the proper qualifications and operate their businesses in a safe and secure manner.

The issuance of a regulatory business license for the operation of entertainment establishments in the City shall not establish or convey a vested right or a property right in the permittee or the property.

5.78.020 Definitions.

“Admission Charge” means any charge for the right or privilege to enter any entertainment establishment 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 of entrance. It does not include tips, gratuities, voluntary donations, or suggested donations for employees or for any person providing entertainment.

“Entertainment” means any live performance, including but not limited to all forms of music, theatrical or comedic performance, song, dance, or vocal entertainment by a disc jockey or announcer, participated in by one or more employees, guests, customers, or any other person or persons.

“Entertainment Establishment” means any business establishment or concern open to members of the public, with or without admission charge, in which entertainment is offered or performed, except as exempted in Section 5.78.040.

“Entertainment Promoter” means an individual or group of individuals, entity or organization that organizes, coordinates, schedules, advertises, solicits patrons, oversees or otherwise promotes entertainment in the facilities of another.

5.78.030 Permit Requirement.

- A. Unless exempt pursuant to section 5.78.040, it is unlawful for any person owning, operating, managing or in possession and control of a business establishment in the City and any entertainment promoter to provide or permit entertainment that is open to the public without an entertainment permit issued pursuant to this chapter. Prior to commencing operation of an entertainment establishment, the owner or operator shall obtain a permit in the manner provided for in this chapter and it shall be posted in a conspicuous public place on such premises at all times. Failure to post such permit shall be a violation of this Code and shall be grounds for revocation of such permit. Prior to operating or conducting business in the City, an entertainment promoter shall obtain a permit in the manner provided for in this chapter.
- B. Neither the obtaining of an entertainment permit nor compliance with the operating standards provided in this Code shall obviate the need for, or excuse any noncompliance with, the zoning code, building code, fire prevention code, or any other or additional permit or code requirement made applicable to the entertainment or entertainment establishment under any other provision of this Code or state or federal law.

5.78.040 Exemption from Permit Requirement.

The provisions of this chapter shall not be deemed to require a permit for the following:

- A. The use of a radio or other electronic playback device in any establishment, except when utilized by an announcer or “disc jockey” who at any time provides any form of vocal entertainment for the purpose of gaining the attention and interest of, or diverting or amusing guests or patrons, including the announcing of song titles or artists’ names;

- B. Entertainment consisting of ambient or incidental music provided for guests or patrons by one (1) non-amplified musician. If there is an admission charge required to observe or attend such entertainment, the music will not be considered ambient or incidental;
- C. Entertainment provided for invited guests at a private event such as a wedding reception, banquet or celebration where there is no admission charge;
- D. Entertainment conducted by or sponsored by any bona fide club, society, or association, organized or incorporated for benevolent, charitable, dramatic or literary purposes, having an established membership, and which holds meetings at regular intervals of not less than once per three-month period, when proceeds, if any, arising from such entertainment are used for the purpose of such club, society, or association;
- E. Entertainment conducted solely on or at any premises or location which is owned or operated by, or leased by, to or from the City of Hermosa Beach, the State of California, the County of Los Angeles, the United States, or any agency or subdivision thereof;
- F. Parades;
- G. Street performers, such as musicians, singers, or mimes;
- H. Performances by the students at educational institutions as defined by the Education Code where such performances are part of an educational or instructional curriculum or program;
- I. Dance lessons, theatrical and performing art lessons and student recitals;
- J. Book readings, book signings, poetry recitations, and any other similar entertainment consisting of the spoken word; and
- K. The normal and customary fitness services provided by an athletic club or fitness center.

5.78.050 Application for Permit.

- A. Applications for entertainment permits shall be filed with the City Manager upon a written form provided by that office stating, as applicable:
 1. The name, signature and permanent address of the applicant;
 2. The name and permanent address of all persons having a financial interest in the operation of the entertainment, business, or premises where the entertainment is to be located;
 3. A detailed description of the proposed entertainment, including type of entertainment, number of persons engaged in entertainment, and any further information about the entertainment or entertainers, as the City Manager may deem necessary;
 4. The date, hours, and location where the entertainment is proposed to be conducted and the admission charge, if any, to be charged;
 5. The name or names of the person or persons responsible for the management or supervision of applicant's business and of any entertainment;
 6. A statement of the nature and character of applicant's business, if any, to be carried on in conjunction with such entertainment, including whether or not alcohol is or will be served as part of such business;
 7. Whether or not the applicant or any person or persons responsible for the management or supervision of applicant's business have been within the previous five years, convicted of a crime, the nature of such offense, and the sentence received therefore including conditions of parole or probation, if any;

8. Whether or not the applicant has ever had any permit or license issued in conjunction with the sale of alcohol or provision of entertainment revoked, including the date thereof and name of the revoking agency;
9. The proposed security arrangement for control of patrons;
10. Written consent for the proposed entertainment on the premises from the owner of the property on which the entertainment is to be conducted;
11. Such other reasonable information as the City Manager may deem necessary; and
12. In the case of entertainment promoters, the number of events proposed to be conducted, whether the events are recurring on a regular schedule, and the location or locations of proposed events.

B. Applications for entertainment permits shall be accompanied by a fee established by resolution of the City Council, which shall be no more than necessary to cover the costs of processing and investigating the application and acting on the permit.

5.78.060 Issuance of Permit- Investigation and Hearing.

- A. Upon receiving an application for an entertainment permit, the City Manager shall set the matter for a public hearing. The public hearing shall be conducted by the City Manager or his or her designee no more than forty-five (45) days from the date of receipt of the complete permit application.
- B. Notice of the time and place of a public hearing on an application for an entertainment permit shall be published by the city in a newspaper of general circulation, published and circulated in this city and mailed to the applicant at the address shown on the application and to all property owners within three-hundred (300) feet of the proposed entertainment establishment. Notice of the public hearing must be given at least ten days prior to the hearing. The hearing may be continued from time to time as necessary to receive relevant evidence.
- C. Prior to the public hearing, the City Manager or his or her designee, shall conduct an investigation and may obtain reports from the chief of police and such other city departments as he or she deems necessary to determine if the proposed entertainment is in compliance with the provisions of this Chapter.
- D. The City Manager shall act on the application within ten days of the close of the public hearing. The City Manager shall approve and issue the permit if all the requirements of Section 5.78.070 have been satisfied. If the City Manager determines that the application does not satisfy the requirements of this Chapter, he or she shall deny the application. Notice of the City Manager's decision shall be mailed to the applicant at the address shown on the application, to every person in attendance at the public hearing who requests such notice from the hearing secretary and to all the property owners within three-hundred (300) feet of the applicant's business.

5.78.070 Standards for Approval of Permit.

The City Manager shall approve and issue an entertainment permit if he or she finds:

- A. That issuing the permit and conducting entertainment at the proposed location, as conditioned, is consistent with federal, state, and local laws, rules, regulations and any existing or required permit(s), the conditions imposed by such permits or Municipal Code requirements;
- B. Neither the applicant or any person or persons responsible for the management or supervision of applicant's business 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;
- C. Neither the applicant or any person or persons responsible for the management or supervision of applicant's business has a history of committing, permitting or failing to prevent significant violations of the Hermosa Beach Municipal Code or any license or permit, in connection with an entertainment establishment for which he or she is a responsible person;
- D. It does not appear, based on the information before the City Manager, that the applicant has provided false or misleading material information in the application;
- E. The premises within which the entertainment is located shall provide sufficient sound absorbing insulation so that noise generated inside the premises shall not be audible anywhere on adjacent property or public right-of-way or within any other building or separate unit within the same building;
- F. All indoor areas of the entertainment establishment in which patrons are permitted and entertainment is presented, shall be arranged in such a manner that the entire interior portion of the viewing area is open and visible from aisles and public areas of the place of entertainment and shall be open to view by management at all times. Visibility shall not be blocked or obscured whatsoever; and
- G. The entertainment establishment will have a manager on the premises at all times when entertainment is performed.

5.78.080 Conditions.

In issuing the permit, the City Manager may impose conditions relating to the operation of the entertainment establishment.

A. Conditions may relate to:

- 1. The days, hours and location of operation;
- 2. Restrictions designed to prevent minors from obtaining alcohol, such as separate entrances, exits, and restroom facilities on the premises;
- 3. Whether licensed security guards are required, and if so, how many;
- 4. The number and age of persons allowed on the premises;

5. Specific measures the permit holder must undertake to control conduct of the patrons so as to prevent or minimize disorderly conduct within the establishment;
 6. Specific measures the permit holder must undertake to remove trash attributable to the establishment or its patrons on and around the establishment, the surrounding neighborhood and the public right-of-way;
 7. Specific measures the permit holder must undertake to prevent the entertainment and its patrons from disturbing the peace and quiet of surrounding neighborhood;
 8. Specific measures the permit holder must undertake to prevent its patrons from engaging in disorderly conduct in the surrounding neighborhood;
 9. Whether the chief of police must receive advance notice of the date of a particular event if that event is not held as part of the regularly scheduled events of the business;
 10. With respect to applications from business establishments, the use, engagement or employment of entertainment promoters on the premises of the establishment; or
 11. Other matters related to public health, safety, and welfare.
- B. Conditions shall be based on specific, articulable facts reasonably related to insuring the public health, safety and welfare, including but not limited to the prevention of criminal activity, the conservation of limited city public safety resources, and the prevention of public nuisance activity that detracts from the peace and quiet of residential neighborhoods.
- C. Conditions shall be listed on, or attached to, the permit.
- D. If the applicant has been issued a conditional use permit (CUP), nothing in this chapter or the zoning code shall be construed to limit the authority of the City Manager to place additional conditions upon the entertainment permit whether or not in conflict with the existing CUP conditions. In the event of a conflict, the most recently imposed conditions shall be deemed to prevail.
- E. The City Manager may require the applicant to demonstrate compliance with an existing CUP or code requirements prior to issuance of the permit or may issue the permit conditioned upon the applicant obtaining any other additional necessary permits, license or other city or state approval.

5.78.090 Permit Transfers and Changes.

- A. No entertainment permit shall be sold, transferred, or assigned by any permit holder, or by operation of law, to any other person, group, partnership, corporation or any other entity, and any such sale, transfer or assignment, attempted sale, transfer, or assignment shall be deemed to constitute a voluntary surrender of such permit, and such permit shall be thereafter null and void. A permit held by an individual in a corporation or partnership is subject to the same rules of transferability as contained above. Entertainment permits are valid only for the exact location(s) specified in the permit.
- B. A new permit is required whenever there is a transfer in ownership of an entertainment establishment. If there is no change in the nature or scope of business or in the business location and if the previous owner has a valid entertainment permit at the time of transfer, the new permit shall be issued upon filing of a complete application, payment of the required fee and the City Manager's determination that the standards for approval set

forth in 5.78.070 have been met. The following transactions shall be considered transfers in ownership:

1. The addition or withdrawal of a new partner or partners;
2. The transfer of a business from a corporation to an individual, or vice versa, unless the corporation and the individual is the same person;
3. The transfer of a majority share of stock in a corporation from one shareholder to another; or
4. The transfer of a business from an individual , partnership, corporation, cooperative, service organization, or other association to any other such individual, partnership, corporation, cooperative, service organization, or other association.

C. A new entertainment permit is required whenever there is a change of name of an entertainment establishment. If there is no transfer of ownership or change in the nature or scope of business or in the business location and if the permit holder operating under the previous name has a valid entertainment permit at the time of the change of name, the new permit shall be issued upon the filing of a complete application, payment of the required fee and the City Manager's determination that the standards for approval set forth in Section 5.78.070 have been met.

5.78.100 Expiration and Renewal of Permit.

An entertainment permit shall expire one-year from the date of issuance, and may be renewed annually thereafter upon filing of a renewal application and payment of a renewal fee in an amount set by Council resolution. An application for renewal must be filed at least thirty days prior to expiration of the current entertainment permit. Upon a permit holder's request for renewal, the City Manager may review the current activities upon and adjacent to the entertainment establishment and may impose any additional conditions that he or she reasonably deems necessary to safeguard the public safety, health and welfare; or he or she may refuse to renew the permit if the findings required for permit approval in Section 5.78.070 can no longer be made.

5.78.110 Emergency Suspension.

An entertainment permit may be suspended immediately if the City Manager determines that there is an immediate and significant threat to public safety and welfare arising out of the use of the entertainment permit. The permit holder shall be provided by personal service and first class mail with notice of the suspension setting forth the grounds giving rise to the suspension and ordering that the entertainment operation cease and desist during the suspension. After such notice is given, the permit holder shall have ten (10) days within which to correct the conditions giving rise to the suspension and to provide the City Manager with proof of the corrective action taken. During this period, the permit holder shall discontinue all entertainment on the premises. Upon timely correction of a condition giving rise to a suspension, the permit may be reinstated by the City Manager. Failure or refusal of the permit holder timely to correct the condition shall result in institution of revocation proceedings as set forth in Section 5.78.120. Should the permit holder fail or refuse to correct the condition within the ten (10) day period, the suspension shall remain in effect until the conclusion of the revocation proceeding.

5.78.120 Revocation.

A. An entertainment permit may be modified or revoked by the City Council, upon recommendation of the City Manager, for any of the following reasons:

1. The entertainment has been conducted in a manner contrary to the findings for the issuance of a permit set forth in Section 5.78.070;
2. The permit holder has failed to comply with one or more conditions of the permit;
3. The entertainment has created sound levels that violate the Hermosa Beach Municipal Code;
4. The permit holder or his or her employees, agents, or representatives have violated or are violating federal, state or local laws, rules or regulations in connection with the entertainment;
5. The entertainment has been conducted in an illegal or disorderly manner or has been conducted in such a manner as to constitute an unreasonable burden on the reasonable use and enjoyment of neighboring properties;
6. The applicant has knowingly made a false statement of material fact or has knowingly omitted a material fact in the application;
7. The entertainment has created or is creating a nuisance;
8. The permit holder has failed to display the permit on the premises where the entertainment is conducted pursuant to Section 5.78.030; or
9. The permit holder or any other responsible person has violated any provision of this Chapter.

B. Notice of a hearing before the City Council to consider revocation or modification of the permit shall be as provided in this paragraph. Notice of the time and place of a public hearing on revocation or modification of an entertainment permit shall be published by the city in a newspaper of general circulation, published and circulated in this city and mailed to the permit holder at the address shown on the permit application and to all property owners within three-hundred (300) feet of the applicant's business. Notice must be given at least ten (10) days before the hearing.

C. After consideration of the evidence, the Council may revoke the permit, suspend the permit for a time certain, modify the permit, or reinstate the permit. The City Council shall take final action by resolution and its action shall be final.

5.78.130 Modification Requested by Permit Holder.

If the City Manager finds a modification requested by the permit holder is consistent with the provisions of this Code and will not constitute a material modification to the permit, the City Manager may modify the permit. If the requested modification will result in a material modification to the permit, the City Manager shall hold a duly noticed public hearing pursuant to the procedures set forth in Section 5.78.060.

5.78.120 Appeal.

- A. Any person aggrieved by the decision of the City Manager, in issuing, denying, or suspending a permit or imposing conditions on the permit, may appeal the decision to the City Council. 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 mailed to the applicant or permit holder.
- B. The Council shall hold a public hearing on the appeal within forty-five (45) days of filing the appeal and its decision thereon shall be final. In the case of an appeal by a person other than the applicant or permit holder, the permit holder may continue to conduct entertainment during the pendency of any appeal.
- C. Notice of the public hearing on the appeal shall be published by the city in a newspaper of general circulation, published and circulated in this city and mailed to the permit holder at the address shown on the application, to the appellant and to all property owners within three-hundred (300) feet of the entertainment establishment. Notice of the public hearing must be given at least ten days prior to the hearing.
- D. The City Council shall announce its decision within a reasonable time, but not to exceed thirty (30) days, following the close of the public hearing, unless good cause is shown for the extension of time and the applicant or opponent or both are notified of this extension and the reasons therefor. The City Council's final action shall be taken by resolution and notice thereof shall be given by mail to the applicant/permit holder or appellant, or to both if they be different parties

Section 2. All establishments in the City offering or providing live entertainment and all entertainment promoters conducting business in the City shall be in possession of a permit pursuant to Chapter 5.78 of the Municipal Code by July 11, 2007 or shall thereafter cease and desist from providing and offering live entertainment.

PASSED, APPROVED AND ADOPTED this 12th day of December, 2006.

Mayor

Attest:

City Clerk