



City of Seattle
Gregory J. Nickels, Mayor

MEMORANDUM
Draft Ordinance Creating a Nightclub Advisory Board
July 12, 2006

TO: Nightlife Task Force Members
FR: Jordan Royer

The attached draft ordinance is the result of many months of study and represents one part of an overall strategy. The ordinance establishes the Nightclub Advisory Board (NAB) and outlines the regulatory framework for a Nightclub License. The “Operating Agreement” concepts we have discussed have been incorporated into the ordinance as “Nightclub Business Operating Standards.”

We all know that the benefits of nightlife in Seattle need to be recognized and supported. Because of this, we are working within the budget to add staffing through the Office of Economic Development (OED) to support the NAB. The Mayor recognizes the importance of the ombudsman role which will be provided by the OED position and is committed to moving forward with a holistic approach. The staff will assist the NAB in developing promotional and early assistance materials and will serve as the “one point of contact” for new and existing licensees.

The purpose of the ordinance is to promote and protect the public health, safety, and welfare by establishing a formal process setting forth standards for granting, renewing, denying, or suspending the City’s permission for a nightclub license. In addition, it is the purpose of this ordinance to control the secondary effects caused by some nightclubs by providing the licensee an opportunity to take voluntary corrective action to address problems.

Additionally, the NAB will have a strong role within the regulatory framework. Before any enforcement action is taken, licensees will have the opportunity to meet with the NAB to correct any problems. In some instances, licensees will be required to meet with the NAB.

I will schedule a Task Force meeting within the next couple of weeks after you have had time to carefully review the draft ordinance. We look forward to the opportunity to get back together and to explain how the whole system will work. Thanks for your ongoing commitment to helping us design a system that will work for all of us.

Attachment

DRAFT ORDINANCE

ORDINANCE _____

[Ordinance Title reserved]

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Chapter 6.280 is added to the Seattle Municipal Code as follows:

6.280.010 Legislative Findings.

[Legislative Findings reserved]

6.280.015 Definitions.

For the purpose of this chapter:

A "City" means the City of Seattle.

B. "Director" means the Director of Executive Administration or the Director's designee.

C "Entertainment" means any dancing, singing, music or other entertainment such as exhibitions, theatrical performances, shows or similar amusements conducted or participated in by patrons, members, entertainers, employees or other persons upon the premises of an establishment that has a liquor license.

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D. "Entertainment Business" means any establishment with a liquor license that provides Entertainment.

E. "Hearing Examiner" means the City of Seattle Hearing Examiner, or his or her designee.

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F. "Liquor" has the same meaning as in RCW chapter 66.04.

Deleted: F. "Nightclub" means an establishment, other than a theatre with fixed seating, which: ¶

¶ (1) provides after 10:00 p.m. (a) amplified live entertainment; or, (b) recorded music conducted by a disc jockey or other person employed or engaged to do so; ¶

¶ (2) sells liquor, and ¶

¶ (3) has an occupant load of fifty or more persons

G. "Entertainment CommissionEntertainment Commission" means the commission authorized in SMC 6.280.020.

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H. "Person" means any individual, sole proprietorship, partnership, corporation, association, or other public or private organization of any character.

I. "Premises" means any any room, place, space, or portion thereof where Entertainment is conducted and shall include hallways, restrooms, parking lots and all other adjoining areas under the licensee's ownership and control and accessible to the patrons of the Entertainment.

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J. "Sound Violation" means that amplified sound emanating from the Premises is plainly audible to a person of normal hearing inside a residence, for a continuous period of twenty seconds or longer. In making such determination, all windows and doors to the residence must be closed and the residence must be in compliance with current building codes regarding insulation and glazing.

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K. "Weapons" means either firearms or dangerous knives, as defined in SMC 12A.14.010.

Deleted: K. "Impacted public areas" means public property adjacent to the nightclub premises where either patrons or prospective patrons gather (for example in areas where prospective patrons gather waiting to enter the nightclub, where patrons gather to smoke, or where patrons gather as they exit the nightclub).¶

6.280.020 Entertainment Commission

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A. The Mayor shall appoint and City Counsel shall confirm an Entertainment Commission consisting of seven (7) persons, including operators of Entertainment Businesses, neighborhood residents, or other interested individuals. A minimum of three Entertainment Business operators shall be on the Commission. The Office of Economic Development shall staff the Entertainment Commission. The duties of the Entertainment Commission shall include advising the City regarding: (1) the promotion, development and sustainability of the Entertainment business in Seattle (2) implementation of Entertainment Business licensing programs and any other matters regarding this ordinance, (3) development of guidelines for effective and responsible business practices for the operation of Entertainment Businesses, including improvements to the Entertainment Business Operating Standards, (4) development of recommendations for allocation of City resources that benefit night time businesses and address problems associated with a vibrant downtown, such as: development and deployment of kiosks and signs reminding patrons to keep their voices down; directing police to areas where residents are seeing repeated problems with rowdy behavior and public urination. The Commission shall be the single body through which the various City departments shall raise concerns about Entertainment Businesses (Note, that what licensees need to know here is that if they get their Entertainment Business License that they are not going to be harassed by DPD in the months that follow arguing that they need to change their status to "drinking establishment", etc.---there needs to be some mechanism for establishing a unified licensing program with predictability) The Commission may also provide applicants or licensees with assistance, mentorship and professional resource opportunities and advice regarding compliance with the requirements of this ordinance. The Commission shall have the ability to obtain the cooperation and information from City departments in fulfilling its duties as outlined above. The Commission shall meet with Entertainment Business licensees required to meet with the Commission pursuant to SMC 6.280.100A

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and shall provide those licensees with advice regarding compliance with the requirements of this ordinance.

B. Entertainment Commission members shall serve a term of three years, unless reappointed by the Mayor and confirmed by City Council.

C. Service on the Entertainment Commission shall be strictly voluntary and members shall not be compensated for participating on the Commission.

6.280.030 License Required.

A. It is unlawful for any person to operate an Entertainment Business without having a valid Entertainment Business license issued pursuant to this chapter.

B. A separate Entertainment Business license is required for each location at which an Entertainment Business is operated.

C. Content of Entertainment. The Director shall not consider the content or viewpoint of entertainment in an Entertainment Business in making a decision regarding granting, denying or suspending an Entertainment Business license pursuant to this chapter.

6.280.040 Application for License or Permit.

A. Entertainment Business license applications must be filed with the Director on forms provided by the Director and shall include:

1. The name and business address of the applicant, and the name and business address of the applicant's partners, owners, officers, and directors. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation and the applicant shall also attach a copy of the disclosures required to obtain a liquor license.

2. The address of the location for which the Entertainment Business license is sought, together with a copy of Certificate of Occupancy for Premises of the Entertainment Business and a floor plan of the Premises which shows what portion(s) of the Premises will be used for Entertainment and all points of ingress and egress.

3. Completion of the business plan questionnaire form (to be developed by the Entertainment Commission) for the proposed establishment.

4. A copy of the Criminal History Questionnaire for all persons required to be filed as part of the Entertainment Business's liquor license application.

5. Name and address of a responsible agent resident in King County upon whom service of notice or process may be made.

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~~Deleted: set forth the date and place of incorporation, the names and residence addresses of each of the officers, directors, and each stockholder owning more than 10% of the stock of the corporation. If the application is a partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one of more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply.~~

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~~Deleted: , specifying the days and hours of operation, the number of patrons, the numbers of employees and their duties, the name of the manager or managers who shall be on the premises during all hours of operation, the types or classes of entertainment to be provided, including but not limited to: dancing, live music with or without dancing, recorded music with dancing, karaoke, theatre, comedy act, film or other entertainment, and whether the entertainment will take place in or out of doors. The business plan shall describe how the applicant plans to comply with the Nightclub Operating Standards contained in SMC 6.280.080. Upon request of the applicant the Office of Economic Development may review the business plan and provide assistance to the applicant~~

~~Deleted: Whether the applicant or any one of the applicant's partners, officers, directors, or the establishment's primary manager has, in the past five (5) y (... [1]~~

6. Entertainment Business licensees shall provide the Director with any changes pertinent to the information required in this section, including any changes in the ownership of the establishment within ten (10) days of such change.

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7. An application is not complete until information required by this section is submitted to the Director together with payment of the applicable fees required under SMC 6.280.060.

B. Investigation of Application. (1) Upon receipt of a complete Entertainment Business license application, the Director may circulate the application to any of the City's departments from whom it wishes to receive input including without limitation, the City's Police Department, the Department of Planning and Development, the Fire Department, the Department of Neighborhoods and the King County Department of Public Health, or their functional successors. Any department receiving the application shall review the application to determine if the proposed operation of the establishment complies with applicable laws and shall, within fifteen calendar days of receipt of the application, make a recommendation to the Director whether the license should be granted, granted with conditions, or denied. If a department fails to respond within the allotted 15 calendar day period the department will be deemed to have recommended the granting of the application. Any recommendation other than the granting of an application must be accompanied by specific and detailed reasons, supported by verifiable facts, for such recommendation. The Director may only impose conditions on the grant of an application to the extent necessary to cause the Entertainment Business to comply with SMC 6.280.070(B). The Director may also circulate the application to and seek comment on the application from the Washington State Liquor Control Commission, and other agencies, community councils and organizations the Director determines may have information relevant to a decision on the application. At the end of the 15 calendar day review period, the Director shall present all information received to the Entertainment Commission and after consulting with the Entertainment Commission and considering the comments of the Entertainment Commission in good faith, shall make a determination whether the applicant's business plan appears adequate to prevent violations of the Entertainment Business Operating Standards contained in SMC 6.280.080 no later than 30 calendar days after receipt of the complete Entertainment Business license application.

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6.280.050 Renewals of Licenses

Once an Entertainment Business has been granted an Entertainment Business license, that license shall be automatically renewed provided the licensee pays the annual fee until such time as the Entertainment Business License is revoked in accordance with the provisions of SMC 6.280.090.

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6.280.060 Fee Schedule.

The initial application fee for the Entertainment Business license shall be \$50. The annual Entertainment Business license fee shall be \$30. Both the application fee and the annual license fee shall be tendered as part of the complete license application. [We need some further information on this. First, we need the following questions answered: (1) How much revenue does the City get from admissions taxes? (2) How much of the admissions taxes are paid by Entertainment Businesses? and (3) On what are admission taxes spent? The City's Entertainment Businesses already pay a very substantial amount of money to the City. These moneys should be allocated to cover the costs of this program and to increase City resources at night.]

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6.280.070 Grant or Denial of Entertainment Business License.

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A. Timing and Contents of Decision. Within thirty (30) calendar days of a complete application for a Entertainment Business license being filed the Department, the Director shall, after consulting with the Entertainment Commission and considering the Entertainment Commission's concerns in good faith, grant, grant with conditions, or deny the Entertainment Business license. In the event of a grant with conditions or denial, the Director shall state specific and detailed reasons, supported by verifiable facts, for such recommendation. If at the end of the thirty (30) day review period the Director determines that he needs further information from the applicant, he shall grant the applicant a temporary Entertainment Business license and shall communicate such supplemental questions or corrections in writing. The Director shall grant, grant with conditions or deny the Entertainment Business license within fifteen calendar days of the receipt of the applicant's responses. All denials and grants with conditions must be in writing, and must give specific and detailed reasons, supported by verifiable facts supporting the denial or conditions.

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B. The Director shall grant the Entertainment Business license (or grant with conditions necessary to avoid a violation of the following), unless the Director makes one or more of the following findings:

1. The Premises of the proposed Entertainment Business do not comply with or fail to meet any State, King County or City health, safety, zoning or fire law;

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2. The applicant's answers to the business plan questionnaire are not adequate to prevent a violation of the Entertainment Business Operating Standards contained in SMC 6.280.080;

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3. The applicant has not complied with the requirements of SMC 6.280.040 after notice of failure and an opportunity to correct;

4. The applicant made a false statement or material omission in the application;

5. The applicant has not obtained all applicable City licenses or permits, or has failed to pay applicable City taxes;

6. The applicant or any one of the applicant's partners, owners, officers, or directors, owns, an Entertainment Business whose Entertainment Business license is currently suspended or has within a year preceding the Director's receipt of the application, owned, operated, or managed an Entertainment Business which has (a) had an Entertainment Business license revoked or a retail liquor license canceled or revoked,

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Deleted: 7. A renewal license may be denied for a violation of any Nightclub Operating Standard pursuant to SMC 6.280.080 or any specific license condition imposed by the Director pursuant to this ordinance.

6.280.075 Entertainment Business Licenses for existing businesses.

A. The Director shall issue an Entertainment Business license without conditions, to a person who was operating an Entertainment Business as of the effective date of this ordinance. A license issued pursuant to this section shall be subject to revocation and the payment of fees, in the same manner as all other Entertainment Business licenses.

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6.280.080 Entertainment Business Operating Standards.

A. All Entertainment Business are required to meet the following Entertainment Business Operating Standards.

1. Security Standards.

- i. Weapons. Entertainment Businesses shall not knowingly permit patrons to enter an Entertainment Business premises with any Weapons;
- ii. Drugs. Entertainment Businesses shall knowingly permit patrons to enter an Entertainment Business premises with any illegal drugs;
- iii. Violence. Entertainment Businesses shall use good faith efforts to prevent physical violence on the premises, including behavior that would violate SMC Chapter 12A.06;
- iv. Liquor Violations. Entertainment Businesses shall comply with all applicable State laws pertaining to the sale of alcohol; and
- v. Notification requirement. Entertainment Business personnel shall promptly contact law enforcement officials if they observe a violation of law occurring on the Entertainment Business Premises.

Deleted: B. Within twelve months of the issuance of an interim nightclub license pursuant to this section, the Director shall complete a full review of the license application and business plan and shall issue a final decision either granting, granting with conditions, or denying the application. Upon issuance of the final decision, the interim license shall be canceled and have no further effect.

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2. Standards Regarding Other Potential Negative Impacts.

Deleted: <#>Closing Time Security. Nightclub personnel shall patrol the area within 100 feet of the nightclub beginning at least 30 minutes before closing time and continuing until ... [10]

- i. Sound Violations. Entertainment Businesses shall prevent sound violations as defined in SMC 6.280.015J.
- ii. Littering. Entertainment Businesses shall take reasonable steps to prevent patrons from littering in public areas immediately adjoining the Entertainment Business, and shall clean up litter in those areas daily prior to 9:00 a.m.
- iii. Entertainment Businesses shall provide and prominently display near the main entrance to the Entertainment Business the telephone number for business that the public can call to notify the Entertainment Business of concerns regarding the Entertainment Business's operation, including possible violations of law or of this chapter.

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- Deleted: The telephone number shall be staffed anytime the nightclub is open to the public.

B. A violation of the Entertainment Business Operating Standard may be grounds for suspension of a Entertainment Business license or imposition of license conditions in lieu of suspension of an Entertainment Business license, as provided in SMC 6.280.090.

6.280.090 Entertainment Business License Suspension

Any Entertainment Business license issued under the terms of this chapter may be suspended or revoked pursuant to the procedure set forth in Section 6.280.100 when:

- 1. Any of the grounds for denial of an initial application pursuant to 6.280.070 exist;
- 2. The licensee has violated one or more of the Entertainment Business Operating Standards outlined in SMC 6.280.080(A)(1)(i)-(iv); or
- 3. The licensee has knowingly allowed repeated violations of any of the other Operating Standards not covered in 2 above or repeated violations of a condition imposed on the license by the Director.

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6.280.100 Entertainment Business License Suspension Procedure.

A. Except as provided in SMC 6.280.100B, when the Director has reasonable cause to believe that grounds for suspension of an Entertainment Business license exist and a majority of the Entertainment Commission concurs with the Director's belief, a notification letter shall be sent to the licensee or agent designated pursuant to SMC 6.280.040A5, giving notice of the potential grounds for suspension and notifying the licensee that, unless such matters are corrected to the satisfaction of the Director within 30 days of the date of the notification letter, the Director may suspend the license. Within ten (10) days of receiving the notification letter, the licensee shall respond in writing to the Director acknowledging receipt of the notification letter and stating the steps the licensee will take to correct the violations outlined in the letter. If a licensee has

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received a prior notification letter, the Director may also require a licensee to meet with the Entertainment Commission. If the licensee corrects the violations within 30 days of the notification letter and no further grounds for suspension occur within that 30 days, the Director shall take no further action on the notification letter.

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B. If the licensee: (1) does not respond to the Director as required in SMC 6.280.100A; (2) does not correct the matters stated in the notification letter to the satisfaction of the Director within 30 days of the date of the letter, or in the case of matters requiring more than 30 days to correct has not commenced corrections within such 30 days; (3) commits further violations of SMC 6.280.080(A)(1)(i)-(iv) within 30 days of the date of the letter or (4) has within a twenty-four (24) month period received two (2) previous notification letters of a ground for suspension stated in 6.280.080(A)(1)(i)-(iv) or has had his or her Entertainment Business license suspended; the Director shall suspend the license by issuing a notice of suspension. The notice shall state the specific grounds for suspension and that the suspension shall go into effect ten (10) days from the date of the notice unless the licensee, within that time, delivers a written request for a hearing to the Hearing Examiner and the Director.

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C. The Director's determination whether a licensee has violated an Entertainment Business Operating Standard or license condition is administrative in nature, and must be established by clear and convincing evidence under all the circumstances.

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6.280.110 Periods of Suspension.

A. The first suspension of an Entertainment Business license under SMC 6.280.100 within any twenty-four (24) month period shall be for a period of seven (7) days.

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B. The second suspension of an Entertainment Business license under SMC 6.280.100 within any twenty-four (24) month period shall be for a period of thirty (30) days.

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C. The third or subsequent suspension of an Entertainment Business license under SMC 6.280.100 within any twenty four (24) month period shall result in revocation of the license. A person who has had an Entertainment Business license revoked may not apply for another Entertainment Business license for a period of one year from the date of such revocation.

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D. For the purposes of this section, calculation of the period of twenty-four (24) months shall not include any period of time during which the license was suspended.

E. Before resuming operation as an Entertainment Business following a suspension, the licensee shall submit a corrective action plan that satisfies the Entertainment Commission that recurrence of the grounds for suspension is unlikely.

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6.280.120 License Conditions.

A. In addition to the Entertainment Business Operating Standards pursuant to SMC 6.280.080, the Director with the approval of a majority of the Entertainment Commission, may impose conditions on an initial Entertainment Business license, or on a current license in lieu of a license suspension, when the Director determines such conditions are necessary to prevent a violation of one or more of the Entertainment Business Operating Standards. License conditions may include, but are not limited to, requiring a licensee or applicant to meet with the Entertainment Commission, screening patrons for weapons or illegal drugs, or requiring a specified number of security personnel on the Entertainment Business Premises.

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B. A repeated violation of any license condition is grounds for suspension of the license pursuant to SMC 6.280.090(3).

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C. The Director shall consider the following factors in making a determination to impose conditions on an Entertainment Business license: (1) the nature of the public safety problems associated with the Entertainment Business (SMC 6.280.080(A)(1)(i)-(iv)); (2) the history of the applicant or licensee in maintaining order at establishments operated by the applicant or licensee; (3) the number of years that a similar Entertainment Business has been operating at the Premises; and (4) any other factor which the Director determines is reasonably related to the application of the Entertainment Business Operating Standards or other provisions of this chapter.

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D. The Director shall attach in writing, all license conditions permitted by other sections of this ordinance to the Entertainment Business license.

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E. If the Director determines that any condition imposed upon a license will require substantial cost or significant alterations to the premises of an Entertainment Business, the Director may in so far as is consistent with protecting the public safety allow the applicant or licensee a reasonable time, considering the nature of the Entertainment Business and its natural seasonality, not to exceed twelve months to comply with such condition, or in the case of a licensee whose Entertainment Business predates the effective date of this Ordinance, waive the condition entirely upon showing of impossibility or undue burden to the licensee.

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6.280.130 Appeal.

A. Initial License. An applicant whose application for an initial Entertainment Business license has been denied pursuant to this chapter may seek immediate judicial review in King County Superior Court. The applicant is not required to exhaust his or her administrative remedies before seeking judicial review.

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B. Suspension of License.

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1. An applicant appealing a suspension of a license must file that appeal with the Office of the Hearing Examiner. Appeals must be made in writing and served on the Office of the Hearing Examiner and on the Director no later than ten (10) days after the

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mailing of the notice of the Director's decision. Except for good cause shown, the Hearing Examiner shall commence a hearing within forty-five (45) days of receiving a notice of appeal. The Hearing Examiner shall conduct a hearing pursuant to the rules of procedure of the Hearing Examiner for the conduct of hearings. The Director shall have the burden to prove by clear and convincing evidence that grounds for denial or suspension exist. The Hearing Examiner shall affirm, vacate or modify the Director's decision regarding the license denial or suspension. If appealed, the Director's decision suspending a license shall be stayed until the Hearing Examiner renders a final decision.

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2. The Hearing Examiner shall issue a decision including findings of fact and conclusions of law within fifteen (15) days of the conclusion of the hearing.

3. A party aggrieved by the Hearing Examiner's final decision may seek judicial review in King County Superior Court as provided in chapter 7.16 RCW. Such appeal must be filed within fourteen (14) days of the date the Hearing Examiner's decision is issued. If the Hearing Examiner's decision is appealed the license suspension shall be stayed until the King County Superior Court renders a final decision.

C. The applicant or licensee may request to meet with the Entertainment Commission created in SMC 6.280.020 to obtain assistance in developing solutions that address the circumstances that are the basis for the suspension.

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6.280.140 Posting.

Each Entertainment Business must post in a conspicuous location: 1) a copy of the license, including any conditions imposed by the Director; 2) a copy of the Entertainment Business Operating Standards; and 3) the telephone number for the public to call concerning operation of the Entertainment Business, as required by SMC 6.280.080.

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The Director or the Chief of Police may summarily suspend a nightclub license if the Director or the Chief of Police reasonably determines that the continued operation of the establishment as a nightclub poses an immediate threat of serious injury or damage to person or property. The suspension shall take effect immediately, without a prior hearing. The licensee shall be provided an opportunity for a review hearing before the Director within seventy two (72) hours from the issuance of a summary suspension. If the Director affirms the suspension, the appeal rights shall be the same as for an appeal of a license suspension under SMC 6.280.110, except that the suspension of a license under this section shall not be stayed pending appeal. ¶

6.280.150 Transfer.

No Entertainment Business license shall be transferable from person to person.

6.280.160 Term.

All licenses issued pursuant to this chapter shall expire on December 31st of each calendar year.

6.280.170 Operating without a License--Penalty.

Any person who shall operate an Entertainment Business without a valid Entertainment Business license issued pursuant to this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$1000). Each day that a Entertainment Business is operated without a valid license shall constitute a separate violation of this section.

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6.280.180 Rules.

The Director ~~may, after consultation with, and ratification by a majority of the members of the Entertainment Commission,~~ issue rules to implement and enforce the provisions of this chapter, including but not limited to policies and procedures for granting, granting with conditions, denying, suspending or imposing conditions in lieu of suspending an ~~Entertainment Business~~ license.

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6.280.190 Severability.

If any provision, section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter shall be held void or unconstitutional, all other parts, provisions and sections of this chapter not expressly so held to be void or unconstitutional shall continue in full force and effect.

Section 2. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2006, and signed by me in open session in authentication of its passage this ____ day of _____, 2006.

President of the City Council

Approved by me this ____ day of _____, 2006.

Greg Nickels, Mayor

Filed by me this ____ day of _____, 2006.

City Clerk
(SEAL)