



Memorandum

TO: RULES COMMITTEE

FROM: Councilmember Sam Liccardo

SUBJECT: ADULT ENTERTAINMENT
REGULATIONS

DATE: July 30, 2013

APPROVED: *Sam Liccardo*

7-30-13

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Direction

Direct the City Manager and City Staff to explore and bring to Council any of the following regulations relating to adult-themed “bikini bars,” “cabaret clubs” or “gentlemen’s clubs,” that appear enforceable within the bounds of the First Amendment of the U.S. Constitution and Proposition 218, that can be tailored to address “secondary effects” of the operations of such clubs, including but not limited to:

1. Club Fee

Assess, after consulting San Jose Police Department and the departments of nearby cities such as Sunnyvale, whether a nexus can be established between costs imposed by the operations of such clubs on police or other emergency response personnel, sufficient to impose a fee on each club.

2. Protecting Safety and Health

- a. Prohibiting touching of a performer by a patron;
- b. Prohibiting tipping a performer by a patron in any manner likely to involve touching;
- c. Mandating a distance requirement between the performer and patrons;
- d. Prohibiting dancing on tables (or on any elevated platform with smaller than a minimum set of dimension deemed safe for use as a stage), particularly within close proximity to patrons consuming (and spilling) alcohol, or involving performers in very high heels; and
- e. Restricting the sale of alcohol during the performance; and
- f. Mandating minimum lighting standards in all portions of the club open to patrons, and closing all other portions of the building to patrons.
- g. Requiring that all performers be subjected to a background check and/or to obtain a permit, to ensure that they exceed 21 years of age.

3. Other Reasonable Time, Place, and Manner Restrictions

- a. Requirement to close at 12 midnight, or an earlier hour;
- b. Minimum separation requirements from schools, day-care facilities, libraries, parks, and from other clubs;

4. Permissible, Narrowly-Tailored Restrictions on Commercial Speech

- a. Limitations on advertising in the Downtown, on billboards, on transit vehicles, bus stations, or other forums plainly visible to children.

Discussion

As the Supreme Court and numerous lower courts have repeatedly instructed us, erotic dancing remains protected expression under the First Amendment of the U.S. Constitution. I have sworn to uphold that Constitution. Nonetheless, courts have long permitted reasonable time, place, and manner restrictions, where narrowly tailored so as not to unduly burden the protected expression. *See, e.g., Erie v. Pap's A. M., 529 U.S. 277 (2000).*

Time, place, and manner restrictions address the burdens—commonly known as “secondary effects”—that these clubs impose on society and the taxpayer. As a former prosecutor of sexual assault crimes at the District Attorney’s office, I know that more than an occasional episode of sexual assault or robbery begins or ends at a strip club. University of Louisville social scientists Eric S. McCord and Richard Tewksbury performed regression analysis on crime rates within a fixed radius of compare strip clubs relative to that near other bars, and found dramatically higher rates of robbery, assault, and theft crimes¹. UC Irvine Professor Richard McCleary, Ph.D. has similarly testified before state legislatures regarding ambient crime risks posed by sexually-oriented businesses, citing exhaustive empirical research.² The factors often responsible for the crime-inducing impacts of bikini and strip clubs—e.g., men (and by the end of the night, women) carrying large quantities of cash, disproportionately young male audiences, a strong desire for anonymity among patrons and dancers that inhibits the report of victimization to the police, and the use of drugs and alcohol by female performers—all make strip clubs a target-rich environment for crime and predatory behavior.

At a time when this city’s Police Department remains strapped for resources, we cannot afford to stretch them any further with a poorly regulated club that will become an attractive nuisance for crime. I propose a set of regulations to mitigate these effects, and a fee to address these costs.

Cabaret clubs also undermine our economic strategy for Downtown’s revitalization. A critical path in the redevelopment of urban cores in the Western U.S. has been the injection of thousands of new residents who choose to live in high-rise and mid-rise housing. After a half-decade of stalled development, we have only recently celebrated the ground-breaking of 23-story residential tower – a \$130 million investment that will bring hundreds of residents to Downtown—less than two blocks away from the planned Gold Club. We can only hope that more ground-breakings will follow, but we can’t expect investors and developers to continue to risk their \$130 million on towers that will be routinely surrounded by 24-year-old men with elevated levels of testosterone and intoxication.

Finally, such clubs amount to “attractive nuisances” that harm nearby retail businesses and restaurants that have long struggled to survive Downtown, and will discourage other businesses from locating nearby. Many pedestrians (particularly parents with children, and women) will avoid blocks with such activity. For example, around the block from of the planned Gold Club site is a ballet school for kids, which has already struggled mightily against the urban challenges of constrained parking and nuisance activity nearby. How many parents, parking their car at the nearby Market Street Garage, will comfortably walk their kids down Santa Clara Street, past the Gold Club, to get to the dance recital? As one Naglee Park resident wrote me, “when my family walks from Naglee to San Pedro Market, we now have to stay completely away from this two- block zone at night, taking San Fernando to San Pedro. I am sure other families will do the same. That means businesses around these 2 blocks of Santa Clara will lose business --including our favorite Tapas restaurant.”

I seek that we ensure that we can limit the adverse impacts from these clubs within the boundaries established by the Constitution.

¹ see <http://secondaryeffectsresearch.com/files/ECCA,%202011%20Presentation.pdf>.

² see <http://secondaryeffectsresearch.com/files/Testimony,%20MO%20Legislature.pdf>