



MEETING DATE: 06/21/16
ITEM NO. 19

COUNCIL AGENDA REPORT

DATE: JUNE 13, 2016

TO: MAYOR AND TOWN COUNCIL

FROM: LAUREL PREVETTI, TOWN MANAGER

SUBJECT: DISCUSS AND ADOPT THE POLICY COMMITTEE'S RECOMMENDATION FOR AN ENTERTAINMENT POLICY ALLOWING ENTERTAINMENT BY RIGHT BEFORE 10:00 P.M. GIVEN COMPLIANCE WITH THE CURRENTLY ADOPTED NOISE ORDINANCE IS MET AND ALLOWANCE FOR LATE NIGHT ENTERTAINMENT AFTER 10:00 P.M. WITH AN APPROVED PERMIT.

RECOMMENDATION:

Discuss and adopt the Policy Committee's recommendation for an Entertainment Policy allowing Entertainment by right before 10:00 p.m. given compliance with the currently adopted noise ordinance is met and allowance for late night entertainment after 10:00 p.m. with an approved permit.

BACKGROUND:

On October 6, 2015, the Council received public testimony at a Study Session regarding alcohol beverage service and entertainment, and continued the item to a Study Session on November 3, 2015 to discuss next steps. At that meeting, Town Council directed staff to explore and bring back a variety of economic vitality and business related topics including framework for an ordinance or operational permit for alcohol and entertainment.

The Policy Committee began to review and explore the work that has been completed over the last several years for alcohol and entertainment, noting that the complexity that continues to arise during these discussions is due to the difference between issues associated with alcoholic beverage consumption versus those regarding entertainment. As a result, the Policy Committee is recommending that the two topics be separated and that the Council consider only a policy on entertainment at this time (Attachment 1).

PREPARED BY: MONICA RENN
Economic Vitality Manager

Reviewed by: _____ Assistant Town Manager _____ Town Attorney _____ Finance

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DISCUSSION:

Entertainment is often desired by restaurants, cafes, retailers, and other merchants as an enhancement of the environment for their patrons while within the confines of their location. When responsibly executed, entertainment may provide merchants with the opportunity to attract customers, create a more desirable experience, build return customer base, and market the products and services provided. Especially in the setting of downtown or shopping centers, entertainment can provide a draw for customers who then park once and patronize multiple merchant locations.

Staff commonly receives requests from merchants for the ability to provide entertainment including poetry readings; open microphone nights; live music for brunch and/or evening dinner service; and grand openings or anniversary sales. The merchants have requested entertainment to occur during the businesses' normal operating hours and within the confines of their merchant location. Given that these requests are not directly associated with alcohol beverage consumption, staff concurs with the Policy Committee's recommendation to separately regulate entertainment and alcohol beverage consumption, and adopt a policy addressing entertainment at this time to allow businesses to enhance their operations during the upcoming summer and subsequent warmer weather months. This action is consistent with the Town Council's previously adopted Strategic Priority to strengthen the Town's economic vitality and providing businesses with greater opportunity for customer attraction and retention.

For the purpose of this report and the proposed policy, entertainment is defined as follows:

Entertainment means any activity conducted for the primary purpose of diverting or entertaining persons in a premises open to the general public. Such entertainment may include, but shall not be limited to, live musical performances, instrumental or vocal, dance acts, concerts, live shows, amplified music or sound, dancing, DJ, karaoke, jam sessions, and/or other similar activities.

In addition, this proposed policy also identifies any entertainment occurring after 10:00 p.m. as late night entertainment, and describes it as a discretionary privilege and is not to be construed to be a right of development nor run with the land.

The Policy Committee recommends that the Town Council to adopt a policy that is simple for businesses and staff to implement, monitor, and enforce. In the attached draft policy, entertainment that is in compliance with the currently adopted noise ordinance defined in Section 16.20.25 of the Town Code regulating Commercial and Industrial zones would be allowed by right before 10:00 p.m. (Attachment 2). Any establishment intending to have any entertainment or amplified noise after 10:00 p.m. would be required to obtain an entertainment permit as outlined in Attachment 1.

DISCUSSION (Continued):

With the recommended separation of entertainment from late night entertainment, the Policy Committee discussed how these regulations could be implemented and enforced as they relate to the following:

Existing Conditional Use Permits (CUPs)

Those establishments with existing CUPs that do not have conditions specifically allowing entertainment fall into three categories: those with a CUP that is silent on entertainment; those with a CUP that states they must comply with the Town's provisions on entertainment; and those with a CUP that denies the ability to have entertainment and/or amplified sound.

For the first two categories of CUPs, the businesses would be able to observe the new regulations upon the adoption of the proposed policy. In contrast, the last category, those with disallowances of live entertainment and/or amplified sound would need to come through the public process for a CUP modification.

The Council may elect to direct staff to allow such businesses to do one or both of the following:

- Offer businesses the option to modify their CUPs as a group, which would allow them to be heard with other businesses, reducing the processing time and cost.
- Offer businesses wishing to modify this condition, the opportunity to have only the condition pertaining to entertainment and/or amplified sound considered and not open their entire CUP for review or modification.

The deciding body for the modification would be the same as what was required for the original CUP approval (i.e., establishments with alcohol would require a Town Council hearing for consideration and approval of a CUP modification while minor restaurants may be heard at either the Development Review Committee or Planning Commission levels).

Late Night Entertainment Permit

When considering a late night entertainment permit for businesses, Section I of the attached draft policy outlines the review process. The Policy Committee recommends that the Development Review Committee be the deciding body for late night entertainment permits with appeal rights to the Planning Commission and Town Council. If it is the desire of the Council, an alternative approving body could be identified such as

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DISCUSSION (Continued):

the Planning Commission. Fees for this process would be the same as any application that is heard at these levels. The DRC application is currently \$3,982.23, the Planning Commission application fee is \$6,545.46

Permit Review and Renewal

The Policy Committee and staff recommend that any late night entertainment permit expire immediately upon the change of ownership and not run with the land as CUPs do. The Council may also elect to include a mandatory review cycle or renewal period for each late night entertainment permit issued. Review and renewal could be processed at a staff level with Town Manager approval for applications without code compliance complaints on file.

Enforcement

With both entertainment and late night entertainment, the Code Compliance Division and/or the Police Department would follow up on concerns and investigate possible violations. Multiple founded violations could result in suspension or revocation of a late night entertainment permit, and/or review and possible revocation of the establishment's CUP.

CONCLUSION/NEXT STEPS:

The Council is asked to discuss and adopt the Policy Committee's recommendation for an Entertainment Policy allowing entertainment by right before 10:00 p.m. given compliance with the currently adopted noise ordinance is met, and allowance for late night entertainment after 10:00 p.m. with an approved permit.

Should the Town Council choose to adopt the attached draft policy as written, or with modifications, consideration and direction should also be given on the following:

- The allowance for multiple CUP modifications to be brought forward to the deciding bodies together, rather than each business being required to file separately. Businesses would still have the option to file separately, and in both instances, provide direction that businesses may have only the condition pertaining to entertainment reviewed and modified.
- The review and renewal periods for late night entertainment permits including the deciding body for initial approval and review/renewal cycles.

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COORDINATION:

This report was coordinated with the Town Attorney's and Town Manager's Offices and the Community Development Department.

ENVIRONMENTAL ASSESSMENT:

The adoption of the proposed policy is not a project under the California Environmental Quality Act.

Attachments:

1. Draft Entertainment Policy
2. Section 16.20.025 of the Town Code pertaining to noise in Commercial and Industrial zones.