

CITY OF SACRAMENTO



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September 23, 1985

Law and Legislative Committee
Sacramento, California 95814

Honorable Members in Session:

SUBJECT: Revision of Chapter 13, Article III,
Dealing With Concerts

SUMMARY

This report recommends that the City Council adopt the attached ordinance amending Article III of Chapter 13 of the City Code dealing with live concerts.

BACKGROUND

This office has become aware that Chapter 13, Article III of the City Code dealing with concerts is outmoded and likely infirm in view of several relatively recent court decisions.

The proposed amendment clarifies a present ambiguity that exists as to just when a dance permit would be required as opposed to the need for a "concert" permit. As well, The current sections dealing with "dance concerts" contain insufficient safeguards to withstand judicial attack.

ANALYSIS

There has been disagreement in the past between dance concert permit holders and City management over whether a dance concert permit presumes that dancing will be allowed without a dance permit. The basis for the applicants' position arises from the very name: "dance concert". The proposed amendments resolve this matter by eliminating the term "dance" from the provisions regulating live concerts. It will then be clear that where both activities are present, both permits are required.

The proposed language also will eliminate suspected constitutional infirmities by providing an appeal process specifically for concert permits. Currently, the aggrieved dance concert applicant must utilize appeal procedures common to public dance permits, club dance permits, and taxi dance permits. Because live concerts are First Amendment constitutionally protected activities, the permit

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process for live concerts may utilize only reasonable time, place and manner restrictions, and not the more subjective requirements allowed for public, club or taxi dance permits.

The attached proposed ordinance contains language for the regulation of concerts that has withstood attack in the appellate courts.

RECOMMENDATION

The Council should adopt the proposed ordinance if it wishes to maintain valid permit requirements for the regulation of live concerts.

City staff and this office recommend that the proposed ordinance be adopted.

Respectfully submitted,

JAMES P. JACKSON, City Attorney

By:



RICHARD F. ANTOINE,
Deputy City Attorney

ARTICLE III Concerts

CITY MANAGER'S OFFICE
RECEIVED

AUG 26 1985

Sec. ~~13.20~~ 13.15 Permit Required

It shall be unlawful and a public nuisance for any person to conduct or operate a ~~dance~~ concert or to permit a ~~dance~~ concert to be conducted on any property, premises, or in any establishment owned, leased or operated by such person unless a permit is first secured therefor in a manner provided by ~~Article V~~ Section 13.24 of this ~~chapter~~ article.

Sec. ~~13.21~~ 13.16 "Concert" Defined

The term "~~dance~~ concert" shall mean any concert or performance of non-recorded musical selections which is open to the general public. The term shall not include the presentation of non-recorded musical selections in connection with any public gathering where the presentation of such musical selections is only incidental to such public gathering and not a primary purpose thereof.

Sec. ~~13.22~~ 13.17 Exemption from Permit Requirements

The permit requirements of this article shall not apply to any of the following:

- (a) A ~~dance~~ concert conducted in any auditorium, public hall or other similar facility which is owned by a governmental entity.
- (b) A ~~dance~~ concert conducted in a building, establishment or place which is capable of lawfully seating an audience of no more than fifty (50) persons.
- (c) A ~~dance~~ concert conducted in any auditorium, public hall, or similar facility which is owned by a religious organization or association.
- (d) A ~~dance~~ concert which is conducted in a structure which is designed as and has been used within the last ten days primarily as a theatre where fixed seating only is provided for the audience.

Sec. ~~13.23~~ 13.18 Closing Hours

~~Dance c~~Concerts subject to the permit requirements of this article shall not be permitted between the hours of 2:00 a.m. and 7:00 a.m. ~~except when the dance concert permit obtained pursuant to article V of this chapter authorizes such exception and provided that the location of the establishment and the manner in which the dance concert is presented will not constitute a public nuisance or jeopardize or be injurious to the public health, safety and welfare.~~

Sec. 13.19 Granting of Permit

The City Manager shall grant the permit, which shall have a term of thirty (30) days, unless:

- (a) The building, structure, equipment or location of the proposed concert does not comply with or fails to meet all of the health, zoning, fire and safety requirement standards of all of the laws of the State of California and the ordinances of the City of Sacramento applicable to such operations; or
- (b) The applicant, his employee, agent or manager, has knowingly made any false, misleading, or fraudulent statement of material part on the application for a license or in any report or record required to be filed with the tax collector or commission.

Sec. 13.20 Application for Permit

All applications for permits shall be filed with the City Manager on such forms as may be prescribed, and shall contain such information as the City Manager shall deem necessary for the proper processing of the application.

Sec. 13.21 Fees

Every application for a permit shall be accompanied by a non-refundable application fee as established by resolution of the City Council. This application fee shall be in addition to any other business license or permit fee imposed by the Sacramento City Code.

Sec. 13.22 Referral, Appeal and Hearings

The City Manager in his discretion may refer to the City Council the application for a permit. In addition, any applicant aggrieved by the decision of the City Manager relating to the issuance or denial of a permit may, within ten days after the decision is made by the City Manager, appeal such decision to the City Council by the filing of a written notice thereof with the City Clerk.

Sec. 13.23 Council Action

The Council may grant the permit after denial by the City Manager if the Council determines that such permit should have been granted pursuant to Section 13.19.

Sec. 13.24 Public Hearing After Referral

Upon referral or appeal to the City Council, the permit requested may be granted or denied by the Council without a public hearing unless such hearing is recommended by the City Manager, requested by the applicant, or requested by the Council.

Sec. 13.25 Posting Notice of Hearing

Notice of hearing shall be given by the posting of notice on the premises where the activity is to be conducted for a period of not less than five days prior to the date of the hearing. The form of notice shall be prescribed by the City Manager.

Sec. 13.26 Publication of Notice of Hearing

The City Clerk shall publish notice of hearing once in the official newspaper of the City at least five days prior to the date of the hearing. The notice shall be in substantially the same form as the posted notice.

Sec. 13.27 Additional Notice

The City Manager may give such additional notice of hearing as he deems appropriate in the particular case.

Sec. 13.28 Conduct of Hearing

At the date set for hearing, the Council shall hear all competent testimony relating to the granting of the permit and continue the hearing to a fixed date.

Sec. 13.29 Effect of Denial

In the event an application for a permit is denied by the council either at the public hearing or without a public hearing, no application for a permit to conduct the proposed activity at the same location shall be considered by the city manager or the city council for a period of one year from the date of denial unless the council, at the time of denial, expressly indicates that its action is without prejudice to the filing of a new application within said one-year period.

Sec. 13.30 Suspension and Revocation - Notice

Any permit issued under the terms of this article may be suspended or revoked when it shall appear to the City Manager, or his representative designated to hear the matter, that the activity authorized by such permit is conducted, maintained or carried out in a manner contrary to, or in violation of, any law of the State or ordinance of the City.

The City Council may direct the City Manager to institute suspension or revocation proceedings. No permit shall be revoked or suspended by virtue of this section until a hearing shall have been held by the City Manager or his designated representative.

Sec. 13.31 Suspension and Revocation - Appeals

Any person aggrieved by the decision of the City Manager or his representative designated to conduct the hearing, in suspending or revoking a permit, or in refusing to suspend or revoke a permit, may

appeal such decision to the Council. The appeal shall be made by filing a written notice thereof with the City Clerk within ten days (10 days) after notice of the decision of the City Manager, or his designated representative, is mailed to the permittee and the persons requesting notice of the hearing pursuant to Section 13.25. The Council shall hold a hearing on the appeal and its decision thereon shall be final and conclusive.

ARTICLE V

Sec. 13.60 Application of Article

This article shall apply to the issuance, denial or revocation of any permit required by Sections 13.01, 13.10, ~~13.20~~ or 13.30 of this chapter.

ARTICLE III Concerts

Sec. 13.15 Permit Required

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The term "concert" shall mean any concert or performance of non-recorded musical selections which is open to the general public. The term shall not include the presentation of non-recorded musical selections in connection with any public gathering where the presentation of such musical selections is only incidental to such public gathering and not a primary purpose thereof.

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