- ATTORNEY-CLIENT PRIVILEGED -

MEMORANDUM

TO: Nick Licata, Seattle City Councilmember

FROM: Phil Brenneman, Assistant City Attorney

SUBJECT: Teen Dance Ordinance Questions

DATE: April 13, 1998

This memorandum addresses the two questions which were directed to me in your March 19, 1998. Pamela Hughes will respond separately to the questions regarding insurance which you directed to her.

Your questions are reiterated below, followed by the response.

1. **Question. What do you see as any legal implications or complications arising from clearly distinguishing between a concert and a dance within the teen dance ordinance, and clearly exempting concerts from its regulations? (Suggestions for clarifying the distinction could include presence of live music where the music is the reason for the event, not dancing, (though dancing may occur incidentally); fixed starting and ending times for the event; and advertising the event as a concert and not a dance).**

Response.

Conclusion.

The Teen Dance ordinance, SMC Chapter 6.294, was not intended to and does not regulate concerts. The ordinance regulates only public dances at which persons under the age of 18 are admitted. If persons under the age of 18 are not admitted, this ordinance is not implicated. Thus, without violating the ordinance, a dance or a concert can be held for "all ages" from 18 on upwards. From my conversations with the police, it does not appear that there is a confusion on the part of the police between public dances and concerts. It appears, however, that promoters have attempted to avoid the restrictions of the Teen Dance ordinance by claiming that a dance is a concert.

Amending the ordinance for the purpose of exempting concerts will require very careful drafting to (1) exclude only events which are actually concerts and are not events which are called concerts merely to avoid the regulations of the ordinance and (2) avoid claims of vagueness, selective enforcement, due process violations and additional trial proof problems in criminal prosecutions brought under the ordinance.

Analysis

The Teen dance ordinance was enacted in 1985 in response to very real concerns about the safety of youths attending dance halls. Prior to that time youth dance halls were unregulated. In the early 1980s, there were high profile instances where teens were routinely victimized (including sexual abuse and drug abuse) at dance halls, as a result of this lack of regulation. An organization comprised of parents and other concerned citizens called Parents in Arms was instrumental in bringing about the closing of two notorious "all age" clubs, the Monastery and City Beat, as public nuisances. Recognition of the need to protect youth in the public dance hall context, led to the enactment of the Teen dance ordinance.[1]

The Teen dance ordinance regulates only non-exempted dances and dance halls[2] which hold public dances at which persons under the age of 18 are admitted. A "public dance" is defined in 6.294.040E as:

"Public dance" means any dance that is readily accessible to the public and which:

1. Is held and conducted for a profit, direct or indirect; or
2. Requires a monetary payment or contribution from any of the persons admitted.

A teen dance is defined in 6.294.040F as:

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[1] One of the leaders Parents in Arms was David Crosby, a lawyer , whose son was abused at the Monastery. I believe Mr. Crosby and his family moved to Alaska. The attorney for Parents in Arms was Bill Dwyer, Senior United States District Court Judge in Seattle. If it would be helpful for your review of these issues, I would be happy to check to see if either Mr. Crosby (or others involved in that organization) or Judge Dwyer would be available to discuss the historical safety concerns of parents regarding the teen dance issues.

[2] The ordinance exempts dances and dancehalls which are 1)limited to 150 or fewer people, 2) operated by accredited educational institutions, 3) operated by a nonprofit tax-exempt organization, corporation or association recognized as tax exempt pursuant to § 501(c)(1) or (3) of the Internal Revenue Code of 1954, and 4) teen dance halls managed or operated by The City of Seattle when the requirements of the ordinance have been waived by the Director.

"Teen dance" means any "public dance" as herein defined which permits the entry of persons under the age of eighteen (18) years.

A teen dance hall is defined by 6.294.040G as:

"Teen dance hall" means any place where a teen dance is conducted, operated or maintained and includes the premises in which the teen dance is conducted, operated or maintained including but not limited to all parking areas, hallways, bathrooms and all adjoining areas on the premises accessible to the public during the dance.

The ordinance does not further define dance or dance hall. Nor does the ordinance specifically exempt other activities such as concerts, which are not regulated by the ordinance. From my conversations with the police, it does not appear that the police are confused between public dances and concerts or that the police have improperly attempted to enforce the ordinance with respect to actual concerts. However, there appear to have been instances in which promoters have asserted that a dance event was a concert. I am not aware of any case in which anyone was charged with a violation of the teen dance ordinance. I discussed this matter with Mike Finkle, Prosecution Team Leader in the criminal division of the Law Department. He reports that he is not aware of any case involving the teen dance ordinance in the eight years he has been with the office.

Under the ordinance as presently written, if the police submitted such a charge to the criminal division of the Law Department and the prosecutor concurred that the ordinance had been violated and filed a charge for violation of the ordinance in municipal court, one of the key elements which the City would be required to prove that the event involved was, in fact, a public dance. It would be a defense to such a charge that the person was not operating a public dance but was holding a concert. If the case proceeded through a trial, the finder of fact (judge or jury) would have to determine if the involved event was a dance or a concert. In making such a determination, the finder of fact would apply common sense and common understanding to the totality of facts and circumstances involved in the event to determine if the event was a dance or a concert.

Common understanding of the meaning of a “dance” is a social event where people go to dance with others. Common understanding of the meaning of a “concert” is an event where people go to view a public musical performance.” Dictionary definitions comport with this common understanding.

The American Heritage Dictionary, Office Edition, in relevant part, defines:

1. "Dance" as "a party at which people dance,"

2. "Concert" as "a public musical performance," and

3. "Performance" as "a presentation before an audience."

Webster's II, New Riverside Dictionary, Office Edition, in relevant part, defines:

1. "Dance" as "a party or gathering for dancing,"

2. "Concert" as "a musical performance for an audience," and

3. "Performance" as a "presentation, as of a musical work. before the public."

Because the terms dance and concert are not defined in the ordinance, the judge or jury (through written instructions from the judge) would consider dictionary definitions of "dance" and "concert" in arriving at a determination of the characterization of an event.

From a municipal prosecutor's perspective the ordinance is effective. The ordinance regulates only nonexempt public dances at which persons under the age of 18 are admitted. The exemptions which are set forth are clear. The ordinance does not regulate concerts. Common sense and common understanding of the difference between a dance and a concert illuminate enforcement decisions by the police and prosecutor.

If the council chooses to amend the ordinance, careful drafting will be required. A categorical exemption for concerts would likely lead to claims that the ordinance is void for vagueness and result in claims of selective enforcement or violation of due process. Additionally, carefully limited exemptions would be necessary to avoid claims that events which are in actuality dances (and at which the public safety concerns underlying the ordinance would arise) would be labeled as concerts to avoid the restrictions on teen dances.

Any potential factor which might be used to distinguish between a dance and a concert needs to be analyzed in light of the above concerns. Thus, the presence of live music, fixed starting and ending times or the advertising billing of an event do not, in and of themselves, make an event a dance or a concert. Both dances and concerts can involve live music. Both concerts and dances can have fixed starting and ending times. Finally, a dance could be advertised as a concert. If the council chose to exempt certain events, the focus would need to be on the totality of facts and circumstances of the event to insure

that such exempted events are not actually dances at which the type of public safety issues underlying the ordinance are likely to occur.

2. **Question. Can the City require certain standards of operation of the holder of a business license, and then revoke the business license if the standards are not adhered to? That is, can we avoid the "special license or permit," and simply incorporate the regulatory standards into the requirements for holding a business license? Is there another mechanism, besides licensing, that would allow us to readily remedy a problem created by failure to adhere to established standards?**

Response

The City licensing structure is divided into two licensing types: Revenue licenses under SMC Title 5 and regulatory licenses under SMC Title 6. The revenue license is essentially only a registration for the City's B & O tax. The purpose of such license is simply for the purpose of raising revenue. The revenue licensing ordinance does not contain regulatory standards of conduct so there is no ability to take license enforcement action on the basis of other requirements, such as zoning, noise or standard of conduct regulations.. The only enforcement mechanism with respect to revenue licenses is that the license may be suspended or revoked for failure to pay the tax.

In contrast, regulatory licenses under Title 6 are intended to insure that a business or individual operates the business in compliance with certain standards. These standards vary with the type of business. The operators of such businesses must obtain a regulatory license in addition to the general business license under Title 5. Such businesses must meet certain requirements to obtain and to keep such a license. The regulatory license can be suspended if the standards are violated.

Washington law requires that license fees charged for regulatory licenses be calculated to be commensurate with the actual administrative costs of such regulation. Regulatory fees which are not so limited would be subject to challenge as unlawful taxes. There is no such restriction for revenue licenses.

Incorporating regulatory standards into the general business license structure would require considerable rewriting of the license codes. The result would be to make all businesses subject to regulatory standards. Additionally, the requirement for commensurate regulatory fees would need to be maintained in the joined license. License enforcement action would be similar to the license enforcement action under the current regula-

tory procedures for licenses regulated under Title 6. I am not aware of regulatory tools other than license enforcement actions to regulate standards of conduct for businesses.