



City of Chicago



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Meeting Date: 3/18/2015

Sponsor(s): Emanuel (Mayor)
Reilly (42)

Type: Ordinance

Title: Amendment of Municipal Code Chapters 4-4 and 4-60
regarding summary closure of establishments deemed
public safety threat

Committee(s) Assignment: Committee on License and Consumer Protection

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OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

March 18, 2015

TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Business Affairs and Consumer Protection, I transmit herewith, together with Alderman Reilly, an ordinance amending Title 4 of the Municipal Code regarding summary closure.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

A handwritten signature in cursive script that reads "Rahm Emanuel".

Mayor

ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Title 4 of the Municipal Code of Chicago is hereby amended by inserting a new section 4-4-285, as follows:

4-4-285 Public safety threat – Summary closure – When authorized.

(a) *Definitions.* As used in this section:

“Acceptable nuisance abatement plan” or “nuisance abatement plan” means any conduct, action, step or acceptance of conditions that is reasonably calculated to prevent the reoccurrence of a public safety threat under this section, as agreed to by the licensee/owner and approved by the mayor in consultation with the superintendent.

“Establishment” means any premises or place of business licensed or required to be licensed by law. The term “establishment” includes adjacent property. As used in this definition, “adjacent property” means (1) any public way located next to an establishment, if such public way is used by the licensee/owner, patrons or employees of the establishment; or (2) any private property that is located next to an establishment, if such private property is owned, leased, rented or used by the licensee/owner; or (3) any private property separated from an establishment by a public way and located next to such public way, if such private property is owned, leased, rented or used by the licensee/owner.

“Establishment’s operating hours” means any time while the establishment is open for business or within one hour or less of the time the establishment is opened or closed for business.

“Licensee/owner” means the licensee of an establishment licensed under this Code. If an establishment is not licensed under this Code, “licensee/owner” means the owner of record of the building or premises in or on which the establishment is operating.

“Mayor” means the mayor of the City of Chicago or the mayor’s designee. Provided, however, that if the mayor designates a local liquor control commissioner, the term “mayor” shall also include said local liquor control commissioner with respect to the exercise of license-related powers, duties and responsibilities vested in the local liquor control commissioner pursuant to the Local Liquor Control Act of 1934 and this Code.

“Public safety threat” means the occurrence of all of the following: (1) a violent offense occurs at an establishment during the establishment’s operating hours, and (2) the violent offense involves acts committed by the licensee/owner, or by any agent, employee or patron of the licensee/owner, under circumstances having a nexus to the operation of the establishment, and (3) the superintendent reasonably determines, based on data or information in the

superintendent's possession, that continued operation of the establishment presents a danger to the public.

"Summary closure" or "summarily closed" means the immediate cessation of all business activities at an establishment and closure of the establishment.

"Superintendent" means the superintendent of police or the superintendent's designee.

"Violent offense" means the illegal discharge of a firearm; aggravated assault or aggravated battery; criminal sexual assault; or any other conduct that causes a person to suffer unconsciousness, severe bruising, severe bleeding, disability or disfigurement.

(b) *Unlawful act – Public nuisance.* It shall be unlawful for any person to operate any establishment in a manner that presents a public safety threat. For purposes of this section, a public safety threat is hereby declared to be a public nuisance subject to abatement under this section.

(c) *Summary closure order – Lifting of summary closure order – When authorized.* If the superintendent determines that an establishment presents a public safety threat, the superintendent may abate such threat by ordering the summary closure of such establishment. If the establishment is properly licensed by the City under this Code, such establishment shall remain closed pending the outcome of a license disciplinary hearing. If the establishment is not licensed under this Code, such establishment shall remain closed for an aggregate period of six months, as measured from the date the public safety threat occurred. Provided, however, that any summary closure order issued by the superintendent under this subsection shall be lifted by the mayor during the interim period pending the outcome of a license disciplinary hearing or expiration of the aggregate six month period, as applicable, and the establishment shall be allowed to reopen during such interim period, if (1) it is determined at a probable cause hearing or nuisance abatement hearing that a public safety threat under this section did not occur, or (2) it is determined at a nuisance abatement hearing that the establishment no longer presents a danger to the public. Provided further, that no summary closure order shall be lifted by the mayor if the establishment is not properly licensed as required by law.

(d) *Notice of summary closure – Required.* Upon ordering the summary closure of an establishment under this section, the superintendent shall cause a dated notice to be posted in a prominent place on the establishment informing the licensee/owner of the following facts: (1) the superintendent has issued an order requiring the immediate cessation of all business activities at, and closure of, the establishment; (2) the reason(s) for the summary closure; (3) the licensee/owner's right to request in writing, within three business days after notice is posted, a probable cause hearing before the mayor to determine whether a public safety threat under this section occurred; (4) if requested in writing, a probable cause hearing shall be commenced within three business days of receipt of such request; (5) the licensee/owner's right, at any time during

the period of closure, to seek to resume business activities at the establishment, by requesting, in writing, a nuisance abatement hearing before the mayor to contest whether a public safety threat under this section occurred or to rebut the superintendent's determination under subsection (b)(3) that the establishment presents a danger to the public; (6) if requested in writing, a nuisance abatement hearing shall be commenced by the mayor within five business days of receipt of such request; (7) the name of the person and the address to which a written request for each hearing should be directed; (8) the consequences of not requesting a hearing; and (9) the owner's potential liability for three times the cost or expense incurred by the city in abating a public safety threat under this section.

If a person apparently in control of the establishment is present at the time the notice is posted at the establishment, a copy of such notice shall be personally served on such person at that time. In addition, a copy of such notice shall be mailed, by first class mail, to the licensee/owner. If the establishment identified in the notice is licensed under this Code, such copy shall be mailed to the licensee or, if applicable, to the registered agent or other officer of the licensee, at the licensee's business address. If the establishment identified in the notice is not licensed under this Code, such copy shall be mailed to the owner of record as listed with the recorder of deeds, and to the taxpayer of record, of the building or premises in or on which the establishment is operating. At the time the establishment is summarily closed, the superintendent shall also post a sign at the establishment notifying the public of the penalty which shall attach, as set forth in subsections (m) and (n), if the summary closure order is violated or if any posted notice or means used to effect the closure is removed without authorization.

(e) *Probable cause hearing.* Within three business days after notice is posted under subsection (d), the licensee/owner of the establishment may request a probable cause hearing before the mayor to determine whether a public safety threat under this section occurred at such establishment. Such request shall be in writing. Within three business days of receipt of a written request for a probable cause hearing under this section, the mayor shall commence such hearing to determine whether a public safety threat under this section has occurred. The decision and order of the mayor shall be announced no later than two business days after the probable cause hearing is completed. If, after a probable cause hearing, the mayor determines, by a preponderance of the evidence, that a public safety threat under this section did occur, the mayor shall enter an order authorizing continued closure of the establishment during the interim period pending the outcome of a license disciplinary hearing under this Code or expiration of the aggregate six month period, as applicable. If, after the probable cause hearing, the mayor determines, by a preponderance of the evidence, that a public safety threat under this section did not occur, the mayor shall enter an order lifting the summary closure order issued under this section and business operations at the establishment shall be allowed to resume during the interim period pending the outcome of a license disciplinary hearing under this Code or expiration of the aggregate six month period, as applicable. If, after notice is given to the licensee/owner in accordance with subsection (d), the licensee/owner fails to request a probable cause hearing in a timely manner, or requests a probable cause hearing but fails to appear at the

hearing, the mayor shall enter a default order in favor of the city authorizing continued closure of the establishment during the interim period pending the outcome of a license disciplinary hearing under this Code or expiration of the aggregate six month period, as applicable. Upon entry of any order under this subsection, the mayor shall so notify the superintendent, who shall take appropriate steps to effect the mayor's order without delay.

(f) *Nuisance abatement hearing.* At any time during the interim period pending the outcome of a license disciplinary hearing under this Code or expiration of the aggregate six month period, as applicable, the licensee/owner may seek to have the summary closure order issued under subsection (c) lifted by the mayor, by (1) requesting, in writing, a nuisance abatement hearing under this subsection, and (2) showing, at such hearing, that there is reasonable cause to believe that the establishment no longer presents a danger to the public, as may be evidenced by the submission and implementation of an acceptable nuisance abatement plan. At such hearing, the licensee/owner may also contest whether a public safety threat under this section occurred at the establishment unless it was previously determined at a probable cause hearing that such public safety threat did occur.

Within five business days of receipt of a written request for a nuisance abatement hearing, the mayor shall commence such hearing. If, after the nuisance abatement hearing, the mayor determines, by a preponderance of the evidence, that a public safety threat under this section did occur and that continued operation of the establishment presents a continuing danger to the public, the mayor shall enter an order authorizing continued closure of the establishment during the interim period pending the outcome of a license disciplinary hearing under this Code or expiration of the aggregate six month period, as applicable. If, after the nuisance abatement hearing, the mayor determines, by a preponderance of the evidence, that a public safety threat under this section did not occur or that continued operation of the establishment no longer presents a continuing danger to the public, as may be evidenced by the submission and implementation of an acceptable nuisance abatement plan, the mayor shall enter an order lifting the summary closure order, in which case the establishment shall be allowed to reopen pending the outcome of a license disciplinary hearing or expiration of the aggregate six-month period, as applicable.

If, at any time after an acceptable nuisance abatement plan is implemented at the establishment governed by such plan, another violent offense occurs at the establishment, such fact shall be prima facie evidence that a public safety threat under this section has occurred; that the existing nuisance abatement plan is insufficient to abate the nuisance under this section; and that the establishment presents a danger to the public. Under such circumstances, the superintendent may order the summary closure of such establishment in accordance with the notice and hearing requirements of this section. In such case, the establishment shall remain closed unless it is determined at a probable cause or nuisance abatement hearing that another violent offense did not occur at the establishment or it is determined at a nuisance abatement hearing that the establishment does not present a danger to the public, as may be evidenced by

the submission of a modified nuisance abatement plan, approved by the mayor and implemented by the owner/license, containing new or additional reasonable and warranted measures capable of abating a nuisance under this section.

(g) *Evidentiary standard.* At any hearing conducted under this section, any evidence on which a reasonably prudent person would rely may be considered without regard to the formal or technical rules of evidence, and the mayor may rely upon written official reports, affidavits and other business records submitted by police officers or other authorized city officials or city employees to determine whether a public safety threat under this section occurred. Provided, however, that only evidence reasonably necessary to demonstrate the existence or absence of elements which must be considered when determining whether a public safety threat occurred under this section shall be heard.

(h) *Cost recovery authorized.* An amount equal to three times the cost or expense incurred by the city in abating a public safety threat under this section may be recovered by the city in an appropriate action instituted by the corporation counsel.

(i) *Right of review.* Any order of the mayor issued under this section may be appealed to a court of competent jurisdiction or as otherwise provided by law.

(j) *Stay pending review.* No summary closure order issued by the superintendent under subsection (c), or order of closure issued by the mayor under subsections (e) or (f), shall be considered to be a suspension or revocation of a liquor license subject to review by the License Appeal Commission under the Liquor Control Act of 1934. Nor shall any such order be subject to the automatic stay provision set forth in Section 7-9 of the Liquor Control Act of 1934.

(k) *Construction of section.* Nothing in this section shall be construed to: (1) prohibit the mayor from taking disciplinary action under section 4-4-280 or other applicable section of this Code authorizing discipline against a licensee for any violation of this section; or (2) effect the status of any ongoing city prosecution or other action related to the establishment on which a public safety threat under this section is occurring, including, but not limited to, any license suspension or revocation hearing authorized under this Code; or (3) prevent the superintendent from summarily closing any establishment for purposes of conducting an investigation of a crime scene or for any other reason authorized by law; or (4) prevent the arrest and prosecution of any person, pursuant to section 4-4-010 or other applicable section of this Code, for operating a business or occupation without a license; or (5) prevent the arrest and prosecution of any person, pursuant to section 4-4-015 or other applicable section of this Code, for operating a business or occupation in violation of any closure order; or (6) constitute an act of possession, ownership or control by the city over the closed premises; or (7) deny common law right to anyone to abate a nuisance.

(l) *Manner of enforcement.* The summary closure authorized by this section shall not

be executed in a manner that prevents legally required ingress to or egress from the residential occupancy portion of a building. Access to the closed establishment by the licensee/owner and other persons able to prove an interest in the establishment may be permitted for the purposes of maintaining the establishment in safe and code-compliant condition, correcting code violations, removing items from the closed establishment and any other purpose authorized in accordance with rules and regulations promulgated by the superintendent. Entry to the closed establishment by government inspectors and investigators acting within the scope of their employment shall be permitted. No means used to close an establishment pursuant to this section shall be removed by the superintendent unless the mayor or a court of competent jurisdiction orders the removal of such means. For purposes of this section, any period of time during which the means used to close an establishment are temporarily removed pursuant to court order shall not be included in the calculation of the required closure period.

(m) *Prohibition on conducting business.* It shall be unlawful for any person to conduct any business activity at, or to knowingly frequent, any establishment that has been summarily closed pursuant to this section. In addition to any other penalty provided by law, any person who violates this subsection shall be fined not less than \$1,000.00 nor more than \$10,000.00 for each offense, or incarcerated for a term of not less than 3 days nor more than 6 months, or both. Each day that a violation continues shall constitute a separate and distinct offense.

(n) *Prohibition on tampering with mechanism of closure.* Except as authorized pursuant to subsection (l), it shall be unlawful for any person to damage, tamper with, destroy, remove or cause to be damaged, tampered with, destroyed or removed any means used to summarily close an establishment under this section or any sign affixed at such establishment pursuant to subsection (d). In addition to any other penalty provided by law, any person who violates this subsection shall be fined not less than \$1,000.00 nor more than \$10,000.00 for each offense, or incarcerated for a term of not less than 3 days nor more than 6 months, or both. Each day that a violation continues shall constitute a separate and distinct offense.

(o) *Failure to comply with approved nuisance abatement plan.* It shall be unlawful for any person to fail to come into compliance, or to fail to remain in substantial compliance, with any nuisance abatement plan approved or subsequently modified under subsection (f). In addition to any other penalty provided by law, any person who violates this subsection shall be fined not less than \$1,000.00 nor more than \$10,000.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense.

SECTION 2. Section 4-60-070 of the Municipal Code of Chicago is hereby amended by deleting the language stricken through and by inserting the language underscored, as follows:

4-60-070 Issuance authority – Special licenses.

(a) A city retailer's license for the sale of alcoholic liquor shall be issued by the local liquor control commissioner. Such license shall be subject to the provisions of an act entitled "An Act relating to alcoholic liquor", approved January 31, the Liquor Control Act of 1934, as amended, and subject to the provisions of this chapter and Chapter 4-4 relating to licenses in general not inconsistent with the law relating to alcoholic liquor Liquor Control Act of 1934 except as otherwise provided herein or in section 4-60-181 or, if applicable, in section 4-4-385 of this Code. Nothing in this subsection (a) shall be construed to prohibit the local liquor control commissioner from enforcing any ordinance or imposing any penalty authorized by law that is as strict or stricter than any requirement or penalty set forth in the Liquor Control Act of 1934. The local liquor control commissioner shall also have the authority to issue a special event liquor license. A special event liquor license may be issued by the local liquor control commissioner for a period of time not to exceed 11 days; provided, however, that if a special event liquor license is issued in conjunction with a Class A indoor special event license issued under Chapter 4-156, the local liquor control commissioner may issue such special event liquor license for a period of time not to exceed 30 days. Such license may be issued only after the mayor has designated an event as a special event. Notwithstanding any provision of this chapter, the fee for a special event liquor license shall be as set forth in Section 4-5-010. The alderman of the ward in which the event is located shall be notified five days prior to issuance of the special event license.

(Omitted text is unaffected by this ordinance)

SECTION 3. Section 4-60-181 of the Municipal Code of Chicago is hereby amended by deleting the language stricken through and by inserting the language underscored, as follows:

4-60-181 Revocation order not stayed by appeal.

An order of the liquor control commissioner revoking a city license under this chapter shall take immediate effect if the liquor control commissioner finds that any of the following circumstances are present: (a) the revocation is for violation of any federal or state law or city ordinance regulating the sale, use or possession of firearms; or (b) the revocation is for violation of any federal or state law or city ordinance regulating the sale, use or possession of narcotics or other controlled substances as defined in the Illinois Criminal Code; or (c) the revocation is for violation of any federal or state law or city ordinance relating to prostitution; or (d) the revocation is for sale of alcoholic liquor to a minor, and the licensee was disciplined for three or more similar sales, occurring in separate incidents, within the prior three years; or (e) the revocation is for violations of this Code or the rules and regulations of the City of Chicago Board of Health related to health and sanitation in a food establishment; or (f) the revocation is ordered pursuant to Section 4-60-195 or Section 4-4-285 because the premises caused a public nuisance; or (g) if the revocation is of a late-hour privilege, the revocation is for the failure to implement or maintain an adequate exterior safety plan, or for any violation of any law or ordinance that the

liquor control commissioner determines warrants immediate revocation of that privilege; or (h) the revocation is for a violation of subsection (k) of Section 4-60-140. For purposes of subsection (d) of this section, "discipline" means revocation, suspension, a voluntary closing in lieu of suspension, or imposition of a fine. In the event that a revocation order contains a finding described in subsection (a), (b), (c), (d), (e), (f), (g), or (h) of this section, the effect of the revocation shall not be stayed pending an appeal by the licensee to the License Appeal Commission under the Liquor Control Act.

SECTION 4. This ordinance shall take full force and effect 30 days after its passage and publication.